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**ABSTRACT**

Presented are the text of H.R. 70, a bill to provide financial assistance to the states for improved educational services for handicapped children, an overview of federal programs for the handicapped, and 42 statements submitted during 4 days of hearings. Components of the bill include granting each state \$600 per handicapped child and requiring each state to submit a state plan regarding the identification and provision of services to handicapped children 3-to 21-years-old. The program overview provides information on federal expenditures, related legislative state programs, and incidence of children receiving and needing services. Included are statements from persons representing organizations such as the following: State Departments of Education, Legal Services Association, Special Olympics, university departments of special education, National Advisory Committee on the Handicapped, Council for Exceptional Children, National Association of the Physically Handicapped, American Foundation for the Blind, and Association for Children with Learning Disabilities. (DB)

ED105671

# FINANCIAL ASSISTANCE FOR IMPROVED EDUCATIONAL SERVICES FOR HANDICAPPED CHILDREN

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U.S. DEPARTMENT OF HEALTH  
EDUCATION & WELFARE  
NATIONAL INSTITUTE OF  
EDUCATION

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## HEARINGS BEFORE THE SELECT SUBCOMMITTEE ON EDUCATION OF THE COMMITTEE ON EDUCATION AND LABOR HOUSE OF REPRESENTATIVES NINETY-THIRD CONGRESS

SECOND SESSION

ON

### H.R. 70

A BILL TO PROVIDE FINANCIAL ASSISTANCE TO THE STATES  
FOR IMPROVED EDUCATIONAL SERVICES FOR  
HANDICAPPED CHILDREN

HEARINGS HELD IN WASHINGTON, D.C.,  
MARCH 6, 7, 18, AND 22, 1974

Printed for the use of the Committee on Education and Labor  
CARL D. PERKINS, *Chairman*



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# FINANCIAL ASSISTANCE FOR IMPROVED EDUCATIONAL SERVICES FOR HANDICAPPED CHILDREN

WEDNESDAY, MARCH 6, 1974

HOUSE OF REPRESENTATIVES,  
SELECT SUBCOMMITTEE ON EDUCATION  
OF THE COMMITTEE ON EDUCATION AND LABOR,  
Washington, D.C.

The subcommittee met at 10:05 a.m., pursuant to notice, in room 2175, Rayburn House Office Building, Washington, D.C., Hon. John Brademas (chairman of the subcommittee) presiding.

Present: Representatives Brademas, Lehman, Quie, and Hansen.

Staff present: Jack G. Duncan, counsel; Gladys Walker, clerk; Martin LaVor, minority legislative associate.

[Text of H.R. 70 follows:]

[H.R. 70, 93d Cong., 1st sess.]

A BILL To provide financial assistance to the States for improved educational services for handicapped children

*Be it enacted by the Senate and House of Representatives of the United States in Congress assembled,*

## SHORT TITLE

SECTION 1. This Act may be cited as the "Education for Handicapped Children Act."

## PURPOSE

SEC. 2. (a) The Congress finds—

(1) that the special educational needs of handicapped children are being met in only a few school systems in the United States;

(2) that there are no special educational services at all for 60 per centum of the estimated number of handicapped children in the United States;

(3) that there are many handicapped children throughout the United States participating in regular educational programs whose handicaps prevent them from having a successful educational experience because of a failure to detect the existence of the handicap;

(4) that developments in the field of the training of teachers for the handicapped and the development of remedial and testing procedures have advanced to the point that given appropriate funding sources and levels, State and local educational agencies can and will provide effective special education programs and services to meet the educational needs of the handicapped;

(5) that present State and local financial resources are inadequate to meet the special educational needs of handicapped children; and

(6) that it is in the national interest and welfare that the Federal Government support special educational programs for meeting the educational needs of the handicapped.

(b) It is the purpose of this Act that all handicapped children receive special educational services commensurate with their individual needs through programs operated by State and local educational agencies which will be of exemplary nature and high quality and designed to provide handicapped children an opportunity to participate meaningfully in family, community, and national affairs.

## DEFINITIONS

Sec. 3 For purposes of this Act, the term---

(1) "handicapped children" means mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, crippled, or health impaired children or children with specific learning disabilities who by reason thereof require special education and related services.

(2) "Commissioner" means the Commissioner of Education.

(3) "the average per pupil expenditure for handicapped children" in a State shall, as determined by the Commissioner, be the aggregate current expenditures during the second fiscal year preceding the fiscal year for which the computation is made (or, if satisfactory data for that year are not available at the time of computation, then during the earliest preceding fiscal year for which satisfactory data are available) of all local educational agencies in the State which provide special educational services to handicapped children, aged three to twenty-one years, inclusive, including the education of such handicapped children in homes and in institutions, plus any direct current expenditures by the State for operation of such agencies (without regard to the sources of funds from which either of such expenditures are made), divided by the total number of such handicapped children in average daily attendance to whom such agencies provided free public education during such preceding year and of such handicapped children receiving education as provided by any such local agency in homes or institutions;

(4) "the average per pupil expenditure for children" in a State shall be, as determined by the Commissioner, the aggregate current expenditures during the second fiscal year preceding the fiscal year for which the computation is made (or, if satisfactory data for that year are not available at the time of computation, then during the earliest preceding fiscal year for which satisfactory data are available) of all local educational agencies in the State, plus any direct current expenditures by the State for operation of such agencies (without regard to the sources of funds from which either of such expenditures are made), divided by the total number of children, aged five to seventeen years, inclusive, in average daily attendance to whom such agencies provide free public education during such preceding year;

(5) "excess cost" means the amount, if any, by which the average per pupil expenditure for handicapped children as defined in (3) in a State minus the average per pupil expenditure for children in such State exceeds \$800;

(6) "State" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(7) "State educational agency" means the board of education of any State or other agency or officer of such State primarily responsible for the supervision of public elementary and secondary schools in such State, or, if there is no such officer or agency in such State, then an officer or agency designated by the Governor of such State or by the law of such State; and

(8) "local educational agency" means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools. Such term includes any other public institution or agency having administrative control and direction of a public elementary or secondary school.

## AUTHORIZATION; DURATION OF PROGRAM

Sec. 4 (a) There are authorized to be appropriated for the fiscal year ending June 30, 1974, and for each of the next four fiscal years thereafter such sums as may be necessary for the purpose of making grants under section 5(a) (2) of this Act.

(b) There is authorized to be appropriated for each fiscal year for the purpose of making grants under section 5(a) (1) of this Act an amount equal to not more than 3 per centum of the amount appropriated for such year for payments to States under section 5(b) of this Act.

(c) There are authorized to be appropriated such sums as may be necessary to carry out section 9(b) of this Act.

(d) There are authorized to be appropriated such sums as may be necessary to enable the Commissioner to administer the provisions of this Act.

## GRANTS AMOUNTS AND ENTITLEMENT

Sec. 5 (a)(1) The Commissioner shall allot the amount appropriated pursuant to section 4(b) for each fiscal year among the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands for such year according to their respective need for such grants. The maximum grant which a local educational agency in the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands shall be eligible to receive and the terms upon which payment shall be made to the Department of the Interior shall be determined pursuant to such criteria as the Commissioner determines will best carry out the purposes of this Act.

(2) In any case in which the Commissioner approves a State plan submitted to him pursuant to section 7, the grant which such State shall be eligible to receive for any fiscal year shall be the sum of

(A) the amount obtained by multiplying the total number of handicapped children, aged three to twenty-one years, inclusive, in such State during the second fiscal year preceding the fiscal year for which the computation is made (or, if satisfactory data for that year are not available at the time of the computation, then during the earliest preceding fiscal year for which satisfactory data are available) by \$600, and

(B) the amount obtained by multiplying the excess cost (as defined in section 3(5)) with respect to such State by 75 per centum of the total number of handicapped children in such State (as determined in order to compute the average per pupil expenditure for handicapped children in such State for such fiscal year).

(3) For the purposes of paragraph (2), the term "State" shall not include the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, or the Trust Territory of the Pacific Islands.

(b) The amount of any State's allotment under subsection (a) for any fiscal year which the Commissioner determines will not be required for that year shall be available for reallocation, from time to time and on such dates during such year as the Commissioner may fix, to other States in proportion to the original allotments to such States under subsection (a) for that year, but with such proportionate amount for any of such other States being reduced to the extent it exceeds the sum the Commissioner estimates such State needs and will be able to use for such year, and the total of such reductions shall be similarly reallocated among the States whose proportionate amounts were not so reduced. Any amount reallocated to a State under this subsection during a year shall be deemed part of its allotment under subsection (a) for that year.

(c) In the event the funds appropriated to carry out this Act are insufficient to make in full the allotments to which the States are entitled in any fiscal year, the allotment to each of the States for such fiscal year shall be reduced pro rata.

## UNIFORM STANDARDS, CRITERIA, AND PROCEDURES

Sec. 6 As soon as practicable after the date of enactment of this Act, the Commissioner shall establish standards, criteria, and procedures to determine which children are "handicapped children" within the meaning of section 3(1). Such standards, criteria, and procedures shall be applied uniformly by all States submitting State plans to the Commissioner pursuant to section 7.

## STATE PLANS

Sec. 7 (a) Any State which desires to receive grants pursuant to section 5 shall submit to the Commission through its State educational agency a State plan at such time, in such manner, and containing or accompanied by such information as he deems necessary. The Commissioner shall approve any such State plan and any modification thereof if he determines that such plan—

(1) sets forth such policies and procedures as will provide satisfactory assurance that funds paid to the State under this Act will be expended by the State either directly or through local educational agencies to initiate, expand, or improve programs and projects, including preschool programs and projects, which are designed to meet the educational needs of handicapped children throughout the State;

(2) provides for the identification of all handicapped children in the State, together with a list of the local educational agencies within the State responsible

for the education of each such handicapped child, whether such child remains in the area served by the local educational agency or is sent out of the area for educational services. Such identification shall include the location in which each such child is presently receiving educational services, a description of the services which each such child is presently receiving, and a statement as to whether or not each such child is institutionalized. Such identification shall be updated from time to time upon changes in the educational status and location of each such child;

(3) includes a proposal for the study of the State's present procedures for the institutionalization of handicapped children, including a study of the classification procedures for handicapped children and the services provided for such children within institutions, and an evaluation of whether institutionalization best meets the needs of such children. Such study shall also include recommendations for methods of deinstitutionalizing handicapped children, with recommendations as to how such children may best be integrated into the regular educational system, if appropriate.

(4) provides for the reduction of the number of handicapped children in the State who are institutionalized, where such institutionalization does not best meet the needs of such children, and for the integration of such children into the regular educational system.

(5) provides for the establishment of procedures for the classification of a child as a handicapped child, which shall include notice and an opportunity for a hearing, including an opportunity to examine records relating to such classification, to the parents or guardians of such child before a local educational agency makes or changes such classification, an independent evaluation of any such classification, and an opportunity for such parents or guardians to appeal the initial decision of such agency with respect to any such classification;

(6) provides satisfactory assurance that, to the extent consistent with the number and location of handicapped children in the State who are not enrolled in public elementary and secondary schools, provision will be made for participation of such child in special educational programs and services provided to handicapped children by the State or by local educational agencies;

(7) provides for procedures and objective measurements for evaluating at least annually the effectiveness of special educational programs and services in meeting the educational needs of handicapped children, including assurances that testing and evaluation procedures for purposes of this paragraph will be administered so as not to be racially or culturally discriminatory;

(8) provides for making such reports, no less often than annually, in such form and containing such information as the Commissioner may require to carry out his functions under this Act, including identification of all handicapped children in the State required by paragraph (2), together with statistical information as to the numbers of such children who are, and are not, being provided with special educational programs and services and information as to the steps being taken to provide such programs and services to all such children, and the results of the testing and evaluation procedures carried out pursuant to paragraph (7);

(9) provides for keeping such records and for affording such access thereto as the Commissioner may find necessary to assure the correctness and verification of reports under paragraph (8) and proper disbursement of funds under this Act;

(10) provides that the State educational agency shall prepare and administer the State plan, and shall, from time to time but no less often than annually, review its State plan and submit the Commissioner any modifications thereof which it considers necessary;

(11) provides for the establishment of a State Advisory Committee on Education for all Handicapped Children, consisting of an appointed membership which shall be broadly representative of individuals involved in the education of handicapped children, including educators, administrators of programs for handicapped children, handicapped individuals, and parents of handicapped children. Such State advisory committee shall (A) assist the State educational agency determining priorities within the State for educational services for handicapped children, (B) advise such agency unmet needs within the State in the education of handicapped children, (C) review the State plan and make recommendations to the Governor regarding the education of handicapped children, and (D) perform such other functions as the Governor deems appropriate;

(12) provides for the distribution of grants under this Act to local educational agencies by the State educational agency on the basis of the relative need for



special educational service in all geographical areas in the State and among appropriate subgroups of handicapped children in the State, as developed under the State plan;

(13) provides satisfactory assurance that the control of funds provided under this Act and title to property derived therefrom, shall be in a public agency for the uses and purposes provided in this Act, and that a public agency will administer such funds and property;

(14) provides satisfactory assurance that such financial control and fund accounting procedures will be adopted as may be necessary to assure proper disbursement of and accounting for funds paid under this Act to the State, including funds paid by the State to any local educational agency;

(15) contains a statement of policies and procedures which will be designed to ensure that all educational programs for handicapped children in the State will be properly coordinated by the persons in charge of special educational programs for handicapped children in the State educational agency;

(16) sets forth policies and procedures which provide satisfactory assurance that funds made available under this Act will be so used as to supplement and increase the level of State and local funds expended for the education of handicapped children, and in no case supplant such State and local funds;

(17) the State education agency shall provide a plan for educational accountability that assures every handicapped child within a State an equal education program based upon measures of the effectiveness of those programs in terms of acquisitions of skills that increase the possibility of self-sufficiency of the handicapped child; and

(18) the State agency in carrying out its administrative responsibilities shall encourage exemplary and innovative approaches to meeting the special educational needs of handicapped children

(b) The Commissioner may disapprove a State plan or modification thereof only after reasonable notice and an opportunity for a hearing to such State.

#### STUDY OF INSTITUTIONALIZED CHILDREN: REPORT TO CONGRESS

SEC. 8 (a) The Commissioner shall review the provisions of the State plans required under section 7(a)(2) and section 7(a)(3) relating to the education of handicapped children who are institutionalized, and shall disseminate information to the States concerning such efforts in other States as he determines will be useful to the States.

(b) The Commissioner shall report to the Congress no later than January 1, 1975, his recommendations with respect to changes which may be necessary in the amount and entitlement of grants under section 5 of this Act, and under other Acts which provide assistance for the education of handicapped children, in order to encourage the removal of handicapped children from institutions where appropriate, and to improve programs of instruction for handicapped children who require institutionalization.

#### PAYMENT

SEC. 9 (a) (1) If a State plan submitted to the Commissioner pursuant to section 7 is approved by him, the Commissioner shall pay to such State the amount which it is eligible to receive pursuant to section 5.

(2) From the funds paid to it pursuant to paragraph (1), each State educational agency shall distribute to each local educational agency of the State the amount for which such application has been approved.

(b) The Commissioner is authorized to pay to each State amounts equal to the amounts expended by it for the proper and efficient performance of its duties under this Act, except that the total of the payments in any fiscal year shall not exceed the greater of

(1) 1 per centum of the total grant for such State as determined for such fiscal year pursuant to section 5; or

(2) \$75,000, or \$25,000 in the case of the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, or the Trust Territory of the Pacific Islands.

#### WITHHOLDINGS

SEC. 10 Whenever the Commissioner, after reasonable notice and opportunity for hearing to any State educational agency, finds that--

(1) a State is not making a determined effort to provide directly or through local educational agencies effective special educational programs and services for all handicapped children in all areas of such State; or



(2) there has been a failure to comply substantially with any provision of any State plan approved pursuant to section 7;

the Commissioner shall notify the agency concerned that further payments will not be made to the State under this Act (or in his discretion, that the State educational agency shall not make further payments to local educational agencies affected by the failure) until he is satisfied that there no longer is any such failure to comply. Until he is so satisfied, no further payments shall be made to the State under this Act, or payments by the State educational agency under this Act shall be limited to local educational agencies not affected by the failure, as the case may be.

#### JUDICIAL REVIEW

SEC. 11. (a) If any State is dissatisfied with the Commissioner's final action with respect to the approval of its State plan submitted under section 7, such State may, within sixty days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Commissioner. The Commissioner thereupon shall file in the court the record of the proceedings on which he based his action, as provided in section 2112 of title 28, United States Code.

(b) The findings of fact by the Commissioner, if supported by substantial evidence, shall be conclusive, but the court, for good cause shown, may remand the case to the Commissioner to take further evidence and the Commissioner may thereupon make new or modified findings of fact and may modify his previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(c) Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Commissioner or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States, upon certiorari or certification as provided in section 1254 of title 28, United States Code.

MR. BRADEMAN. The Select Subcommittee on Education of the Committee on Education and Labor will come to order for the purpose of conducting hearings on H.R. 70, the education of handicapped children bill.

The Chair should observe, at the outset, that the bill we are considering today would enable the Federal Government to pay up to 75 percent of the excess costs involved in educating a handicapped child.

And the Chair should also note that the term "excess costs" refers to the additional expenses—above and beyond the average cost per student—involved in providing special educational services to handicapped children.

By way of background, I should point out that the Federal Government's role in providing educational services to the handicapped has increased substantially in the last decade.

Ten years ago, for example, the Federal Government spent less than \$1 million on the education of handicapped children. In the fiscal 1975 budget recently sent to the Congress, it is estimated that \$350 million will be spent on educating the handicapped—under the legislative authority of the Education of the Handicapped Act, the Vocational Education Act, title I of the Elementary and Secondary Education Act, and Head Start.

The Chair notes at this point that the Rand Corp. has recently completed a major study on Federal programs to assist the handicapped, and the Chair requests unanimous consent to insert the chapter of that report dealing with education of the handicapped in the hearing record.

[The information follows:]

# SERVICES FOR HANDICAPPED YOUTH: A PROGRAM OVERVIEW

## 6. EDUCATION OF THE HANDICAPPED

### OVERVIEW AND SUMMARY

This section contains information about Federal programs and roles in the education of the handicapped, and Federal funds for such programs, data on special education programs in the states, a combined presentation of Federal and state expenditures for special education, a summary of survey responses from state education agencies, and a discussion of previous research and data availability.

To be able to compete successfully with his nonhandicapped counterparts in society, a handicapped person needs at least equal educational opportunities. Public support of special education is doubly important, since education in this country has traditionally been a public responsibility and, unlike in the health area for example, the parent of a handicapped child will find limited alternatives in the private sector for the education of his child. If private special education is available, there is no insurance plan or tax deduction to help defray the cost.

Because the learning process requires the coordination of physical and mental skills, many handicapping conditions become evident in the public school through formal school identification programs (e.g., vision and hearing screening) and informal methods (e.g., teacher observation). Once a handicapped child has been identified, medical or other services available in the public education system may be necessary, in addition to special educational assistance. Identification, counseling, and health-related programs are discussed in Sec. 8 of this report.

In 1971 special education programs in the United States assisted an estimated 3,046,000 physically or mentally handicapped youth under 22, or 6.6 percent of the public school enrollment. Total annual special education expenditures were an estimated \$2.7 billion, of which the Federal share was 12 percent, or \$315 million. Federal special education expenditures represented about 5 percent of the total Federal education budget. State and local expenditures earmarked as special education were also about 5 percent of total state and local education budgets.

A breakdown of Federal expenditures is shown in Table 6.1 for the three major types of programs: those for instruction of handicapped students (78.1 percent of expenditures), those designed to produce resources such as teachers and instructional materials (18.4 percent), and those sponsoring research (3.5 percent).

Total Federal and state and local expenditures by type of handicap are shown in Table 6.2. The mentally retarded receive the largest fraction of total expenditures—an estimated 45 percent—while speech impaired, emotionally disturbed, and learning disabled each receive 10 or 11 percent.

Table 6.1

## SUMMARY OF FEDERAL PROGRAMS FOR EDUCATION OF THE HANDICAPPED

Program	FY 1972 Budget (\$ million)	Estimated Number of Youth Served (year)
Education	245.966	---
EHA-B	37.500	204,836 (1970)
ESEA-Title I		
Local Education Agencies	28.000	180,000 (1972)
89-313	56.381	107,698 (1970)
ESEA-Title III	20.100	134,047 (1971)
Headstart	33.384	37,900 (1973)
Vocational Education Act	38.384	221,342 (1972)
Higher Education Act	0.436	---
Federal Schools for Deaf		
Gallaudet College	7.888	1,565 (1971)
NTI for Deaf	2.907	395 (1971)
Kendall School	1.212	208 (1971)
Model Secondary School	2.524	100 (1972)
Special Target Groups		
Deaf-Blind Centers	7.500	2,300 (1971)
Early Education	7.500	2,000 (1971)
Learning Disabilities (EHA-G)	2.250	---
Instructional Support	57.906	---
Teaching Personnel		
EHA-D	35.145	---
Education Professions Develop-		
ment Act	6.100	---
Regional Resource Centers (EHA-C)	3.550	---
Media		
EHA-F	10.500	---
American Printing House for the		
Blind	1.580	---
Library of Congress	1.031	---
Research	10.994	---
Research (EHA-E)	10.994	---
Total	314.866	---

Priorities among age groups are essentially set by each state. The estimated expenditures by age group were preschool and elementary, 63 percent; secondary, 30 percent, and higher education, 7 percent.

The following subsection discusses each of the education programs sponsored by the Federal Government in terms of what they are intended to do and the function that the Federal Government has assumed in its sponsorship of the program. Much attention has been focused on the Federal role of stimulating innovation in the education of the handicapped. A reasonable allocation of program expenditures to Federal functions (see Table 6.3) showed that 44.2 percent of Federal expenditures for the handicapped were used for that stimulation function in FY 1972. Redistribution of resources from richer to poorer states was the major function of 9 percent of the funds, while basic support of services without a major attempt at redistribution of wealth accounted for 17.9 percent through support of state-operated or supported schools for the handicapped. The Federal Government also directly funds (28.9 percent of expenditures) certain services where economies of scale or externali-

Table 6.2

SUMMARY OF TOTAL SPECIAL EDUCATION EXPENDITURES AND NUMBER SERVED, BY TYPE OF HANDICAP<sup>a</sup>

Type of Handicap	State & Local (\$ million) <sup>a</sup>	Federal (\$ million)	Total (\$ million)	Expenditures per Child Served (\$)	Total Number Served	Percent of Total Served
Mentally retarded, trainable	260.0	45.5	305.5	2064	148,000	4.9
Mentally retarded, educable	840.0	75.9	915.9	1217	752,000	24.7
Hard of hearing	55.0	13.6	68.6	1247	55,000	1.8
Deaf	91.0	42.5	133.5	4767	28,000	0.9
Speech impaired	251.0	21.8	272.8	197	1,383,000	45.4
Visually impaired	66.0	19.2	85.2	3043	28,000	0.9
Emotionally disturbed	258.0	35.0	293.0	1472	199,000	6.5
Crippled	210.0	10.0	220.0	1718	128,000	4.2
Learning disabled	250.0	32.1	282.1	1227	230,000	7.5
Other health impaired	84.0	19.2	103.2	1086	95,000	3.1
Total	2364.0	314.9	2678.9	879	3,046,000	100.0

<sup>a</sup>See Table 6.9 and the subsections "Federal Programs, Roles, and Expenditures in Education of the Handicapped," "Special Education Programs in the States," and "State and Federal Expenditures for Education of the Handicapped" for data sources and methods of estimation.

Table 6.3

**SUMMARY OF FY 1972 FEDERAL SPECIAL EDUCATION  
EXPENDITURES, BY FUNCTION**

<u>Function</u>	<u>Percent of Expenditures<sup>a</sup></u>
Redistribution of resources .....	9.0
Stimulation .....	44.2
Provision of services	
Economy of scale .....	11.1
Internalize externalities .....	17.8
Basic service support .....	17.9

<sup>a</sup>See the following subsection, "Federal Programs, Roles, and Expenditures in Education of the Handicapped," for methods of allocating funds by function.

ties, benefits accruing to all states, make it reasonable for the Federal rather than state governments to provide the services, e.g., higher education for the deaf, research, and teacher training

The Federal program for aid in educating the handicapped has not grown within the framework of a comprehensive plan. Like other program areas with a long history of Federal involvement, this is a patchwork of loosely related activities. For example, two programs (ESEA-III and EHA-B) in practice may fund almost identical sorts of activities, yet are administered by different persons at the Federal and usually at the state level. Other programs were seemingly designed for the regular school population, and then a portion of their funds earmarked for the handicapped. Title III, the Vocational Education Act and Headstart are three Federal programs in which such a program design was followed. An accountability process of questionable quality was built into each of these programs to "ensure" that the earmarked funds actually flowed to the handicapped. Part of the problem of program coordination is overcome by assigning some of the programs to the Bureau of Education for the Handicapped. The BEH, however, is responsible for managing only some 54 percent of the funds identified for special education of the handicapped in this section.

Since the Federal Government supplies only 12 percent of the total special education funds, the present Federal role is not a dominant one, but appears to be a hybrid mixture of the roles with primary emphasis on innovation and stimulation—the catalytic role.

The number of youth receiving special education services as a percentage of all handicapped youth needing those services varies considerably, depending on assumptions made about the incidence rate of the handicap in the population, and the age range of population that needs educational service. Using BEH estimates of the incidence rates, which are reasonable, and assuming that all handicapped youth aged 5-17 need some special education service, we estimate that 59 percent are served. If one assumes that all handicapped youth aged 0-21 need some special education assistance, then only 36 percent are presently being served.

Independent of the assumptions made, however, a large percentage of handicapped youth are unserved, and the percentage served varies markedly across the

states and across the various types of handicap. For example, estimated percentages of 5- to 17-year-old handicapped youth served vary across the states from less than 20 percent to more than 90 percent, and vary across the types of handicaps from less than 25 percent for the hard of hearing or emotionally disturbed up to more than 75 percent for the speech impaired. The mentally retarded, however, stand a good chance of receiving some educational service regardless of the state of residence. The minimum percentage of the retarded served in any state is 35 percent, but only thirteen states fall below 60 percent served.

The annual state and local special education expenditures per youth served average \$776, but vary from an average of \$170 for a speech-impaired youth up to \$3067 for a deaf youngster. The average for all handicaps except speech impairment is \$1271 per year. These data reported by the states understate the funds going to educate handicapped youth, since they probably represent special education "line items" in the state and local budgets, rather than total costs of educating a handicapped child. Services the handicapped child receives out of the regular education budget are probably not included (e.g., the \$170 for the speech-impaired may typically represent only the cost of a therapist). The reported variation in special education expenditures per youth served across the states for all handicaps is extreme, from \$213 in the lowest state to \$1705 in the highest spending state (excluding Alaska). The reported variation across states within a single handicap is even more striking. For example, the range for deafness is from less than \$100 to nearly \$10,000 per pupil per year. If all handicapped youth aged 5-17 were given the same quality special education services and at the same average cost as those presently being served, an estimated additional 2,109,000 youth would have to be served at an increase in the annual total special education budget of approximately \$2.5 billion. Any attempt to increase the percentage served cannot concentrate solely on reaching the population currently in school, but must extend the scope of the school program to reach age groups normally excluded from public schools, and to reach those who have dropped out or have never been admitted to public schools.

In an attempt to understand the variation among states in their special education expenditures per capita (aged 5-17), a simple regression model was formulated. The expenditure rate was regressed against measures of income, population density, and whether or not the state "mandated" special education. The analysis showed that the measure "per-capita income" was significantly related to the expenditure rate. "Mandating" legislation was related to the expenditure rate, but at a lower level of statistical significance (t-statistic = 1.6). Population density was unrelated.

As revealed in our survey, the problems that state governments face in educating the handicapped include the following: inadequate and uncertain funding, shortage of personnel, service problems associated with low incidence populations, lack of coordination among Federal programs, and lack of pre- and post-school programs.

Our review of research materials and data available to the special education planner shows that while a great amount gets published on special education, most of it deals with the classroom level rather than the program level. The decisionmaker in special education has little data on the effectiveness of special education on which to base his resource allocation decisions. We are not implying these programs are ineffective, but rather saying that little data exist to prove their effectiveness.

In summary, our main observations on special education programs are the following:

- State and local governments play the dominant role in special education, with the Federal Government supplying only 12 percent of the funds targeted specifically for handicapped youth. Federally supported programs are numerous and serve a wide variety of functions, the main one being innovation and stimulation, which accounts for about half the Federal expenditures. Because of this low level of financial involvement, the Legislative and Executive branches of the Federal Government do not have great leverage for inducing state and local governments to increase the quantity and quality of special education provided.
- Estimates of the percentage of handicapped youth unserved by any special education program vary widely depending on assumptions made, but all point to the same conclusion. A very large percentage of those needing special education are unserved.
- Extremely large variations in the percentage served exist across the states and across the types of handicaps. Large variations in expenditures per youth served also exist across the states within each type of handicap. The inequity with which the present total special education funds are expended is unmistakably clear.
- Data for planning at the state and Federal level are severely lacking. Estimates of the incidence of handicapping conditions are subject to great uncertainty. Estimates of the population served and the cost of state and local programs supported by Federal funds are made by state personnel on the basis of very little information. Little evaluation information is available relating special educational services to their impact on the lives of the handicapped.
- Expansion of special educational services to those now unserved will require much more than dollars. Incentives must be built in to alter the mix of types of handicaps served. As the mix of handicapped children changes, the mix of teacher skills and types of educational services must change. Identification programs will also be needed to find unserved youth in public schools, and those outside the present educational system.

## **FEDERAL PROGRAMS, ROLES, AND EXPENDITURES IN EDUCATION OF THE HANDICAPPED**

In this subsection, we first describe Federal programs and the role that the Federal Government has assumed in sponsoring them, and then review the Federal share of the cost of these programs. More detailed data on the expenditures and pupils served in the states are presented in later subsections.

### **Federal Programs and Their Functions**

A list of Federal programs aimed at educating handicapped youth is shown in Table 6.4. Based on the output of each program, they can be divided into three basic categories:

- Instruction of handicapped students
- Production of resources in support of instruction.
- Research and development in education of the handicapped

Table 6.4

## FUNCTION OF FEDERAL PROGRAMS FOR EDUCATION OF THE HANDICAPPED

Program	Redistri- bution of Resources	Stimulation		Provision of Services		Basic Service Support
		Demon- stration	Match	Economy of Scale	Internalize Externalities	
Education						
EHA-B		X				
ESEA-Title I						
Local Education Agencies	X					
89-313						X
ESEA-Title III		X				
Headstart		X				
Vocational Education Act		X	X			
Higher Education Act	X					
Federal Schools for Deaf						
Gallaudet College				X		
NTI for Deaf				X		
Kendall School					X	
Model Secondary School					X	
Special Target Groups						
Deaf-Blind Centers			X	X		
Early Education		X	X			
Learning Disabilities (EHA-G)		X				
Instructional Support						
Teaching Personnel						
EHA-D					X	
Education Professions Develop- ment Act					X	
Regional Resource Centers (EHA-C)				X		
Media						
EHA-F				X		
American Printing House for the Blind				X		
Library of Congress				X		
Research						
Research (EHA-E)					X	

As our discussion will show, these categories cannot always be neatly separated in practice

The programs are also classified by the function that the Federal Government is fulfilling in the particular program. Several Federal program functions are discussed in detail in Sec. 3, but for our discussion of education programs, the following four functions are most relevant:

- *Redistribution of resources* from one population group to another, e.g., from wealthy states to poorer states (or individuals). Two basic rationales for such redistributions are to increase the equity of service delivery and to increase the total productivity of society.
- *Stimulation* of state and local program development and investment in education of the handicapped. Demonstration projects, matching grants, and dissemin-



nation of information are attempts to improve and expand state and local programs by making effective service delivery mechanisms known, and by overcoming initial program start-up barriers such as lack of physical facilities. The Federal Government may match state and local fiscal effort with Federal grants. This lets the states buy more with their dollars and can increase the total amount spent on education of the handicapped. The Federal Government may also sponsor demonstration projects that permit state and local education agencies to see a program in operation before deciding to fund it themselves. Demonstrations also allow the Federal Government to pay initial investment costs; state and local governments then pay only annual operating costs. Demonstration projects thus lower both risk and cost to state and local governments of undertaking special education projects. Theoretically, this leads to more state and local dollars flowing to education than there would be without the Federal program.

- *Provision of services* that are more justifiable at the Federal than the state level because of economies of scale or significant externalities that can be internalized at the Federal level. First, there may be large economies of scale in the production of quality education for the handicapped, especially for low incidence population groups. It may be that these economies can be captured only at the Federal level. Second, Federal sponsorship of programs can internalize externalities, since certain investments by one state will have major benefits for another state. Research on educational techniques or the prevention of various types of handicaps, for example, would benefit every state, yet cost about the same whether paid for by the state or the Federal Government. If the state does not consider the benefits flowing to others (and there are no incentives to ensure that this would be the case), it will tend to underinvest in research. Only if the Federal Government operates the program are the costs and benefits to the nation as a whole likely to be considered in the decision.
- *Basic support of special education services.* In this function, the Federal Government assumes partial financial responsibility for some group of clients; the money is not given primarily to redistribute resources, stimulate state or local effort, or for other reasons previously discussed. One rationale often offered for Federal performance of this function is that a major unmet need for services exists, and state agencies have not filled that need because of budgetary problems. Another rationale is that the group needing services can exert pressure more effectively at the Federal level than it can at the state or local level. These groups may represent small minorities at the lower levels of government, but become a powerful lobby through organization at the Federal level. Handicapped persons and military veterans are examples of groups that may have more power at the Federal level than at the local level because of powerful national organizations.

The X marks in Table 6.4 describing the Federal function in each program indicate only the major one. Here again, assignment of roles and functions to programs cannot be made neatly. It should be realized, of course, that assignment of the roles is based on our opinions. We do not argue that any clear definition of Federal roles and functions was made when the authorizing legislation behind each program was approved.

Education of handicapped children is one focal point in the larger battle between the Executive and Legislative branches over the appropriate Federal role in public education.<sup>1</sup> Although this controversy has sharpened and clarified the present outlines of the Federal role, it has also made speculation about the forms that role might eventually take highly problematic.

The existing Federal role is somewhat ambiguous, and current imperatives issuing from several court decisions to ensure the right to an education for all handicapped children<sup>2</sup> and Executive Initiatives to institute Special Revenue Sharing for education of five categories of served populations (disadvantaged, handicapped, vocational education, assistance to federally impacted areas, and support services) to the tune of some \$25 billion may portend a significant Federal role change in the near future. It seems we presently have a hybrid but primarily Catalytic model situation that is being strongly pressured to become predominantly the Special Revenue Sharing model.

These roles are being carried out through an assortment of functional mechanisms, including research and development, seed money, demonstrations and experiments, direct investments in facilities, services, and personnel, and practically any other conceivable function that one might define. Special education for the handicapped is truly such a widely variegated class of activities that it practically defies generalization efforts.

Likewise, the rationales used to justify Federal involvement are multiple and variegated. Some definable programs are currently rationalized (whether implicitly or explicitly, it matters little) in terms of redistribution of resources arguments (e.g., ESEA, Title I, the Higher Education Act). Another cluster is most accurately labeled according to our characterization, of the stimulator rationale (e.g., ESEA, Title III, Vocational Education Act, and Childhood Early Education). Some programs are primarily managed at the Federal level because of economies of scale considerations (e.g., Gallaudet College, media services, and the American Printing House for the Blind). Finally, still another cluster could be rationalized in terms of internalization of externalities (e.g., Model Secondary Schools for the Deaf, training teaching personnel under the Education of the Handicapped Act, and most research support).

In terms of dollar support issued under each category of rationalization, the picture is only slightly clearer. Approximately 44 percent—the largest share—of total Federal expenditures is classifiable under the stimulation category, some 9 percent under resource redistribution or balance wheel arguments, 20 percent under internalization of externalities, 18 percent as basic service support, all under ESEA-Title I, and 11 percent as economies of scale. The predominant functions being carried out using the most sizable or stimulation rationale are demonstrations and experiments and the provision of seed money as parts of the Education for the Handicapped Act (Title VI-B), the ESEA-Title III, and the Vocational Education Act.

<sup>1</sup> See Karen DeWitt, "Education Report/Handicapped School Children Enmeshed in Debate on Federal Role in Education," *National Journal*, Vol. 5, No. 6, February 10, 1972, pp. 199-205.

<sup>2</sup> Taken primarily from the equal protection provision of the 14th Amendment to the Constitution. The key court case was a class action successfully brought in Pennsylvania in 1971 (*Pennsylvania Association for Retarded Children vs Commonwealth of Pennsylvania*), determining that the state is responsible for providing a free education to all children, even if they are excluded from the normal classroom. This case has been generalized to include all physically and mentally handicapped children in *Mills vs Board of Education of the District of Columbia*. Similar suits further expanding on the basic equal provision concept are pending in at least fifteen states, including California, Colorado, Michigan, and Maryland.

Basic service support arguments could possibly have less persuasive power and likelihood of success in the future than policies and programs rooted primarily in efforts to stimulate, to cash in on scale economies, and to internalize externalities. This is entirely consistent with our previous speculation on the newly emerging Federal role in special education as demonstrating a mix of predominantly Model III (Special Revenue Sharing, Plus) and Model IV (Catalytic—Innovation and Stimulation).

### Programs for the Direct Education of Handicapped Students

**Education of the Handicapped Act (EHA), Part B.** Under the provisions of this act, grants are made to the states to support education of handicapped children through initiation, expansion, or improvement of programs at the preschool, elementary school, and secondary school levels. The stated purpose is to stimulate state and local investment in special education. This stimulation is attempted through the demonstration mechanism since there is no matching requirement to obtain Federal funds under this program. Grants are allocated to the states based on the number of children in a state between the ages of 3 and 21. In FY 1970 the program supported education for 204,836 youth.<sup>3</sup>

**Elementary and Secondary Education Act (ESEA) Title I.** Title I provides grants to local education agencies for the education of children from low-income families. These funds are used to expand and improve educational programs which contribute to meeting the special educational needs of educationally deprived children. Handicapped children can benefit from Title I in three different ways:

1 Handicapped children make up part of the educationally deprived population, and as such they can benefit from the increase in school resources as well as the normal children.

2. Title I can be used to provide special education services to handicapped children where such services are not mandated by state law. This is likely to occur in low income states, where such a mandate would cause an immediate financial problem. The number of handicapped youth receiving educational support under this "nonmandated" portion of Title I in FY 1972 was an estimated 180,000.<sup>4</sup>

3 Perhaps the largest impact of ESEA-Title I on the handicapped population comes through an amendment to that act, P.L. 89-313. Under Title I as originally enacted, schools supported or run directly by the state were not eligible for Title I grants. P.L. 89-313 amended the Title so that state schools could participate in Title I. An estimated 107,698 handicapped youth benefited under P.L. 89-313 provisions in FY 1970.<sup>5</sup>

The Federal Government plays two different roles in Title I. For the most part, it acts to redistribute resources in providing compensatory education to educationally deprived children. The argument for Title I is that some school districts do not have the financial resources to carry out compensatory education. The size of the Federal grant is based on the number of children between the ages of 5 and 17 who

<sup>3</sup> U.S. Bureau of Education for the Handicapped, *Aid to the States Information System, National Report*, September 1971. (As of this writing, FY 1971 data are not available.)

<sup>4</sup> U.S. Congress, House, Subcommittee of the Committee on Appropriations, *Hearings, Part 2, Office of Education and Special Institutions*, 92d Cong., 2d sess., 1972 (hereafter cited as *Hearings*), p. 271.

<sup>5</sup> *Aid to States Information System*.



come from low income families (less than \$2000 per year in 1972), who receive Aid to Families with Dependent Children, and who are in institutions for the neglected or delinquent. The Federal Government shifts resources to where they are thought to be more effective, and to make the distribution of educational services more nearly equitable. Whether such increased effectiveness is being achieved is a widely debated subject, but outside the scope of this report.

It is difficult to interpret the Federal function in P.L. 89-313 as one of redistributing resources. The allocation to a state is equal to the average per capita expenditure on education in that state (or one-half the national average, whichever is more) multiplied by the number of eligible handicapped children in average daily attendance (ADA) in all eligible state-operated and state-supported schools. This formula obviously has some balance wheel effect. Since poor states tend to spend less on education per capita than rich states, they will receive more than half of their average expenditures because of the minimum floor set by the national average. Although poor states will get more as a percentage of current expenditures than rich states get on ADA, they will get less money in absolute terms than the rich states get per ADA.

The rationales generally offered for a strong Federal role in redistributing resources are based on both the large amount of resources necessary to operate an adequate program and the wide range of financial capability among the states. In programs serving large numbers of persons, such as welfare and compensatory education, both of these arguments have some credibility. However, in the case of state-operated institutions, there is more room for argument. In a relatively low per capita income state, such as Arkansas for example, only 4 percent of the state budget goes toward operating state-run institutions.<sup>6</sup> The educational component of those expenditures would be much smaller than the 4 percent, of course. The point is, however, that the funds for these schools could be greatly increased without dramatically affecting the size of the total state budget. Under such circumstances the need for redistribution of resources from state to state is far from clear.

Neither is P.L. 89-313 a matching program that can be interpreted primarily as one of stimulation. The Federal Government bases its grants on the average expenditures spent on all education and not just education at state-operated schools. Since the budget of the state schools is small in comparison to the total amount spent on education, the state cannot effectively increase the size of its grant by increasing expenditures at the state-operated schools.

The P.L. 89-313 program primarily functions as basic support for services. In effect, the Federal Government is saying that it will pay each state approximately \$450 for each eligible handicapped child in average daily attendance at state-operated and state-supported schools. The Federal Government has not assumed a basic support role for the education of the handicapped in general, but only for the handicapped in state-operated and state-supported schools.

**ESEA Title III—Supplemental Education Centers and Services, Guidance Counseling and Testing.** This Title is intended to assist schools in the development and establishment of exemplary elementary and secondary school educational programs to serve as models for the regular school program. To ensure

<sup>6</sup> Based on the 1970-71 Budget of the Arkansas School for the Blind, Arkansas School for the Deaf, and the Arkansas Children's Colony (mental retardation), taken from *State of Arkansas Budget Manual*, Little Rock, February 1971.

that part of the funds allocated under this program is spent for special education, states are required to spend at least 15 percent of their Title III allotment on education of the handicapped. The language of Title III makes clear that the Federal function is one of stimulation. "The Commissioner shall carry out a program to stimulate and assist in the provision of vitally needed education services."

This stimulation is only brought about by the demonstration effect since Title III money is not distributed on a matching basis.<sup>9</sup> A reported total of at least 134,047 youth received a portion of their educational services under this program in FY 1971.<sup>10</sup>

**Headstart—Economic Opportunity Act.** A new provision in the legislation authorizing the Headstart program is that 10 percent of the nationwide enrollment opportunities should be reserved for handicapped children. This would result in an estimated<sup>11</sup> 37,900 handicapped youth being served. The reservation of the number of positions, rather than the earmarking of money (as in Title III), is a new approach to diverting money for the handicapped. This assures more accountability because it is easier to count handicapped children than it is to calculate the amount of resources going to a particular group of children.

This reservation of places rather than funds introduces a new incentive structure for the Headstart Project Director. If handicapped children are more expensive to serve than normal children (for some specified level of service), then more than 10 percent of the funds will be going to handicapped children. If the number of children to be served and appropriations were to remain approximately constant, the quantity and/or quality of service received by the normal population within Headstart would decline.<sup>12</sup>

The Project Director has several other choices. First, a probable course of action would be to accept children with only slight handicaps.<sup>12</sup> In such a case, cost differences between the handicapped population and the normal group may be minimal. Second, he may choose to offer the handicapped the same mix of services as the

<sup>9</sup> U.S. Congress, House, Committee on Education and Labor, *Compilation of Federal Elementary and Secondary Education Legislation*, 92d Cong., 2d sess., 1970, p. 35.

<sup>10</sup> The Title III allocation to each state is based on the following formula:

$$G(i) = 200,000 + \frac{5(a - 10,000,000)k(i)}{\sum k(i)} + \frac{5(a - 10,000,000)p(i)}{\sum p(i)}$$

where  $G(i)$  = grant to the  $i$ th state,  
 $a$  = Title III appropriation,  
 $k(i)$  = number of children between 5 and 17 residing in state  $i$ ,  
 $p(i)$  = population of each state  $i$ .

This formula is an approximation since it excludes consideration of Puerto Rican children, the Pacific Trust Territories, and overseas schools operated by the Department of Defense. Such exclusions, however, lead to only a small error.

<sup>11</sup> Compiled from 1972 Title III State Reports to the U.S. Office of Education. Five states (Kentucky, Maryland, Montana, New Hampshire, and Pennsylvania) and the District of Columbia are excluded from this total either because the state report was not available or was inadequately prepared. Program total excludes Texas, which was reported serving 375,000 or an average Title III per pupil expenditure of \$237.

<sup>12</sup> *Education Daily*, September 12, 1972, p. 5.

<sup>13</sup> Quality will decline as measured by dollars spent per normal enrollee. Whether quality as measured by an objective measure of program output will decline is not known.

<sup>14</sup> This course appears most probable since it costs the least, disrupts "normal operating procedures" the least, and since the practice of "creaming" or selecting the least handicapped for admittance to a government program appeared to be a phenomenon in several of the agencies visited during this study.



normal group. It is difficult to predict the outcome of this second alternative. While it may be beneficial to have some program as opposed to none, it would appear on its face to be far from optimal. Since the program has not yet started, no evidence on the actions of project directors with respect to this incentive structure can be measured. In the coming years, however, such reaction should be monitored to ensure that the handicapped are receiving reasonable net benefits from the Headstart Program.

**Vocational Education Act of 1963 as Amended.** The Vocational Education Act provides that 10 percent of the basic grant funds allocated to each state be spent on the handicapped. These funds are used to support the expansion of vocational education in high schools, state-operated schools for the handicapped, community colleges, area vocational schools, and other schools. Because the program requires a 50 percent matching with state funds, it must be considered a stimulator of local investment in vocational education. A total of 208,781 and 221,342 youth benefited from this program in FY 1971 and FY 1972, respectively.<sup>13</sup>

**Higher Education Amendments of 1968 (P.L. 90-575).** This act provides for grants to colleges and universities to assist them in developing programs for disadvantaged students. One qualifying criterion for being disadvantaged is having a physical handicap. A student may also be disadvantaged by reason of a deprived educational, cultural, or economic background. The Federal Government, whose function here is primarily to redistribute resources, is apparently attempting to correct underinvestment in education in early years that may have been due in part to the financially hard pressed nature of the local and state education agency serving the students in their early years.

**Federally Sponsored Schools for the Deaf.** The Federal Government's special interest in schools for the deaf is reflected in its sponsorship of four such schools. In the area of higher education the Federal Government sponsors Gallaudet College (P.L. 83-240), which provides an undergraduate and graduate program for the deaf, a graduate school program in the field of deafness, and adult education for deaf persons. It also operates the Kendall School for Deaf Children, a preschool program for very deaf young children, and the Model Secondary School for the Deaf (P.L. 89-694). This latter school not only provides basic education to its students, but is also a research laboratory in the methods of instructing the deaf. The National Technical Institute for the Deaf (P.L. 89-36), located at Rochester Institute of Technology, specializes in post-secondary school training of the deaf to prepare them for employment.

In support of Gallaudet College and the National Technical Institute for the Deaf, the Federal Government has in a sense nationalized higher education for the deaf in order to achieve economies of scale. These are the only schools of their kind in the country. The Federal Government has not precluded other levels of government from providing this service, but apparently there are not enough deaf persons at the state level to lower the average costs to a state agency to reasonable levels or to offer a quality diversified educational program at the state level. Support for the Kendall School and Model Secondary School can be justified by the externality

<sup>13</sup> U.S. Department of Health, Education and Welfare, Office of Education, Bureau of Adult, Vocational and Technical Education, *Summary Data--Vocational Education, Fiscal Year 1971* Vocational Education Information No. 1 and letter from Harold P. Duns, Program Support branch, DHEW/OE/BAVTE, to J. S. Kakalik, The Rand Corporation, May 9, 1973.

argument. Research into better practices in teaching the deaf obviously has payoffs to all states. This externality to a state may lead single states to underinvest in research, and necessitate Federal programs to correct this deficiency. In 1971 the number served at Gallaudet was 1583, at NTID, 395, and at the Kendall school, 208.<sup>14</sup> The 1973 projected enrollment level at the Model Secondary School is 100.<sup>15</sup>

**Special Target Groups.** Three educational programs authorized under EHA-Parts C and G are aimed at either a specific disability or age group. One of these provides model centers for deaf-blind children. A recent increase in the prevalence of deaf-blind children (though still a very low incidence population) brought about in part by the rubella epidemic of 1964-65 left many children without access to educational services. Services were available to some of the deaf and some of the blind, but the sensorially multihandicapped add another dimension to the education process. The deaf-blind centers were an attempt to overcome this gap in service to a severely impaired handicapped group. An estimated total of 2300 were served in FY 1971.<sup>16</sup> The low prevalence of the handicap made it difficult for many states to provide services to this handicapped group at a reasonable cost. By providing regional centers, the Federal Government is capturing the economies of scale in formulating a program for educating these children. In addition, the externalities of research benefits of this program may be large.

The Federal Government also sponsors a demonstration program of early education for handicapped children and will pay 90 percent of the cost of experimental preschool programs for handicapped youth. This program is stimulative in terms of both the demonstration and matching effect, and served 2000 youth in FY 1971.<sup>17</sup>

EHA-Part G provides model centers to meet the needs of children with specific learning disabilities. Some research and personnel training is also provided at these centers.

### **Programs To Provide Instructional Support**

The Federal Government is involved in supporting programs that provide resources to the education process, as opposed to direct support of that process.

**Teaching Personnel.** Two Federal programs are aimed at increasing the supply of special education teachers. EHA-Part D develops personnel through graduate training, sponsors training for personnel presently engaged or preparing to engage in teaching the handicapped, and provides college fellowships to students pursuing a career in special education. The programs authorized under the Education Professions Development Act (P.L. 90-35) are similar to the personnel training component of the EHA. Under P.L. 90-35 both student fellowships and grants to colleges for program development are sponsored.

As mentioned earlier, Federal sponsorship of programs directed at increasing the supply of teaching personnel is an example of the recognition of the externalities involved in producing teachers. Highly trained teachers of the handicapped are mobile. If one state produces teachers who eventually migrate, they receive smaller

<sup>14</sup> *Hearings*, pp. 1112, 1178.

<sup>15</sup> *Ibid.*, p. 1135.

<sup>16</sup> *Ibid.*, p. 420.

<sup>17</sup> *Ibid.*, p. 422.



benefits for their investment. Federal sponsorship helps to offset this reduction in benefits by also reducing the cost of production. Most new special education professionals are trained in programs supported by the Federal Government. In FY 1970, 17,731 students finished training under programs supported by the U.S. Bureau of Education for the Handicapped.<sup>18</sup>

One additional program, EHA-C, sponsors regional resource centers that concentrate on developing curriculum to aid teaching personnel in the instruction of handicapped children. These centers also are partially involved in research and in training personnel.

**Media.** EHA-F makes available captioned films to the deaf, provides for a National Center of Educational Media and Materials for the Handicapped, and funds media-related research. The National Center and other depositories around the country can be of assistance to local school districts in supplementing their media inventory.

Another media program supported by the Federal Government is the American Printing House for the Blind (APHB). APHB manufactures books and other materials for use by the blind.

A third media program is run by the Library of Congress, which provides free loan books and magazines in Braille and on records for the blind and physically handicapped. This reading material is distributed to libraries throughout the country for circulation to individual readers. The Library of Congress also maintains the National Collections of Braille and recorded books to supplement titles deposited in the libraries. The program is reaching some 120,000 readers,<sup>19</sup> but only about 12 percent of these, or 14,400, are 22 years of age or younger.<sup>20</sup> Federal involvement in each of these programs is called for because of the economies of scale that are available in the production of media.

## Research Programs

A significant percentage of the money devoted to the handicapped can be classified as research. ESEA-Title III and EHA-Title VI-B are largely devoted to experimentation in alternative methods of educating the handicapped. For the purposes of this report, however, research is limited to those items that are termed research in the authorizing legislation.

The Federal role in research is based on the notion of internalizing externalities. That is, research has benefits for everyone, not just the persons performing the research. For example, research in Maryland on curriculum for teaching autistic children can have applicability to teaching children with the same handicapping condition in other states. The Federal Government in this case acts as a consortium of the states in performing the needed research to carry out effective special education programs.

<sup>18</sup> Catalog of Federal Domestic Assistance, Section 13.451, "Handicapped Teacher Education" (update to 1972 issue), U.S. Office of Management and Budget.

<sup>19</sup> Nelson Associates, Inc., *A Survey of Reader Characteristics, Reading Interests and Equipment Preferences: A Study of Circulation Systems in Selected Regional Libraries*, Washington, D.C., 1969, p. 111.

<sup>20</sup> *Ibid.*, p. 3. (Linear interpolation was used to estimate the number classified in the 15-24 age bracket that were under 22.)



The only major Federal program devoted primarily to research for educating the handicapped is EHA-E, which provides for research grants and demonstration programs

### Federal Funds for Education of the Handicapped

Having briefly described Federal programs that are directly and indirectly related to educating the handicapped, we now examine the size of the Federal commitment to each program. First, the Federal program for education of the handicapped is put into perspective by estimating its total cost and then showing this cost as a percentage of Federal expenditures on education, state expenditures on special education, and total outlays for education. Second, Federal expenditures are broken down by the level of instruction—preschool, elementary, secondary, and higher education. Third, expenditures are shown by the function that the Federal Government is playing in the education process. Finally, Federal expenditures are shown by type of handicapping condition.

**Expenditures for Education of the Handicapped.** An estimate of Federal expenditures for educating the handicapped in FY 1972 is presented in Table 6.5. The total is approximately \$315 million, with 78.1 percent allocated to direct support of the education of handicapped children, 18.4 percent to support of instruction through teacher training and media services, and 3.5 percent to research.

These percentage breakdowns may be misleading unless the definitions of the categories used in this report are kept clear. For example, much of the innovative or demonstration expenditures could be classified as research rather than as an expenditure in direct support of education. They have not been defined as research expenditures because in our opinion their primary intent is to stimulate change and local investment in special education, as opposed to using the classroom as a laboratory to explore the fundamental processes of special education. The dearth of evaluation and dissemination of reports on many of these projects suggests a priori that the classification system used here is correct.

The relative magnitude of the Federal programs becomes clearer when we put the budget for the education of the handicapped into some sort of perspective. One relevant comparison is that between Federal funds for education of the handicapped and total funds for education in general. A definitional problem arises in attempting to estimate total Federal funds for education. For our purposes, we estimate the Federal total as just the sum of the budget of the Office of Education and the Headstart Program. The total appropriation for these two items in 1972 was \$6.2 billion.<sup>21</sup> That means that only 5 percent of Federal funds spent on education went for education of the handicapped.

Federal expenditures also make up only a small part of the total expenditures on special education. The state and local contribution to special education has been estimated at approximately \$2.3 billion.<sup>22</sup> This means that the Federal Government

<sup>21</sup> OE Budget was taken from *Hearings*, p. 41. Headstart appropriation was taken from *Education Daily*, September 12, 1972.

<sup>22</sup> These estimates were derived from the reports filed by the state under EHA-B. The reliability of the data is in great doubt. Many of the estimates were made by taking an estimate of the number of children of each disability receiving some sort of service and multiplying by the unit cost of delivering some service education to that particular handicap group. These estimates were neither based on a census

Table 6.5  
FY 1972 FEDERAL FUNDS FOR EDUCATION OF THE HANDICAPPED  
(\$ million)

Program	Budget 'Fiscal Year 1972)	Function				
		Redistri- bution of Resources	Provision of Services			Basic Service Support
			Stimu- lation	Economy of Scale	Inter- nalize Exter- nalities	
Education	245.966	---	---	---	---	---
EHA-8 <sup>a</sup>	37.500	---	37.500	---	---	---
ESHA-Title I						
Local Education Agencies <sup>b</sup>	28.000	28.000	---	---	---	---
89-313 <sup>b</sup>	56.381	---	---	---	---	56.381
ESEA-Title III <sup>c</sup>	20.100	---	20.100	---	---	---
Headstart <sup>d</sup>	33.384	---	33.384	---	---	---
Vocational Education Act <sup>e</sup>	38.384	---	38.384	---	---	---
Higher Education Act <sup>f</sup>	0.436	0.436	---	---	---	---
Federal Schools for Deaf <sup>g</sup>						
Gallaudet College <sup>h</sup>	7.888	---	---	7.888	---	---
NTI for Deaf <sup>i</sup>	2.907	---	---	2.907	---	---
Kendall School <sup>h</sup>	1.212	---	---	---	1.212	---
Model Secondary School <sup>j</sup>	2.524	---	---	---	2.524	---
Special Target Groups						
Deaf-Blind Centers <sup>g</sup>	7.500	---	---	7.500	---	---
Early Education <sup>g</sup>	7.500	---	7.500	---	---	---
Learning Disabilities (EHA-G) <sup>g</sup>	2.250	---	2.250	---	---	---
Instructional Support	57.906	---	---	---	---	---
Teaching Personnel <sup>k</sup>						
EHA-D	35.145	---	---	---	35.145	---
Education Professions Develop- ment Act	6.100	---	---	---	6.100	---
Regional Resource Centers (EHA-C) <sup>g</sup>	3.550	---	---	3.550	---	---
Media						
EHA-F <sup>g</sup>	10.500	---	---	10.500	---	---
American Printing House for the Blind <sup>l</sup>	1.580	---	---	1.580	---	---
Library of Congress <sup>m</sup>	1.031	---	---	1.031	---	---
Research	10.994	---	---	---	---	---
Research (EHA-E) <sup>n</sup>	10.994	---	---	---	10.994	---
Total	314.866	28.436	139.110	34.956	55.975	56.381
Percent	100.0	9.0	44.2	11.1	17.8	17.9

<sup>a</sup> U.S. Congress, House, Subcommittee of the Committee on Appropriations, *Hearings, Part 2, Office of Education and Special Institutions*, 92d Cong., 2d sess., 1972 (hereafter cited as *Hearings*), p. 403

<sup>b</sup> *Hearings*, p. 271.

<sup>c</sup> "The Big Package for Education for the Handicapped," *American Education*, May 1972, p. 39.

<sup>d</sup> Office of Child Development Headstart Program--State Worksheets, as reported in *Education Daily*, September 12, 1972.

<sup>e</sup> *Hearings*, p. 584. Ten percent of Vocational Education funds are earmarked for the handicapped.

<sup>f</sup> An estimate of the percentage of program funds under this Act that were received by the handicapped was not available for 1972. Therefore, the 1973 estimate (taken from *Hearings*, p. 245) was multiplied by the ratio of 1972 to 1973 program funds to obtain the estimates presented here. Estimates of the total program were obtained from U. S. Department of Health, Education and Welfare *Justifications of Appropriation Estimates for Committee on Appropriations, Fiscal Year 1973*, Vol. III, *Office of Education*, Department of Health, Education and Welfare, Washington, D.C., p. 220.

<sup>g</sup> All estimates exclude construction costs.

<sup>h</sup> *Hearings*, p. 1162.

<sup>i</sup> *Hearings*, p. 1107.

<sup>j</sup> *Hearings*, p. 1122.

<sup>k</sup> *Hearings*, p. 403. Includes Teacher Education, Physical Education and Recreation Training, and Recruitment and Information components of EHA.

<sup>l</sup> *Hearings*, p. 1065.

<sup>m</sup> Estimate for the Library of Congress--Books for the Blind and Physically Handicapped program was obtained by multiplying the fraction of total readers under age 22 by the FY 1972 budget estimate in "Budget Justification: Library of Congress Division for the Blind and Physically Handicapped," *memo.*, 1972.

<sup>n</sup> *Hearings*, p. 433.

is bearing 12 percent of the cost of special education. The Federal Government pays about 7 percent of the total national expenditures for elementary and secondary education.<sup>23</sup> Given the uncertainties in the numbers that have been used thus far in the analysis, it is only correct to say that the percentage of expenditures borne by the Federal Government in support of education of the handicapped must be considered small in comparison to the size of both the total Federal, and state and local special and regular education program expenditures.

**Expenditures by Level of Instruction.** As shown in Table 6.6, the emphasis of the Federal program for education of the handicapped is at the preschool and elementary level. Approximately 63 percent of Federal funds go to this level of instruction, with 30 percent to secondary education, and only about 7 percent to post-secondary or higher education. These are only approximate estimates, however, since budget or population breakdowns by age group were not available for some programs accounting for about one-third of the total expenditures. In such cases, the distribution among the levels of instruction was assumed to closely follow that of the EHA-B program. Using the same definition of Federal funds for all education as was used earlier, the percentages going to each level are 71.7 percent to elementary and secondary education, 26.2 percent to higher education; and 3.1 percent to funds unallocated by level of education. We note that the Federal Government spends a much larger percentage of its total funds for all education on higher education than it does for special education of the handicapped. Given the relatively large percentage of the handicapped who do not go on to college, this difference in emphasis appears reasonable.

**Expenditures by Federal Function.** The relatively small size of the Federal expenditures for education of the handicapped almost precludes several of the functions as viable alternatives. Given the high cost of special education, it would be impossible for the Federal Government to fulfill a major or basic service support function at current budget levels. Given the dispersion of both wealth and income in this country, it would take a larger commitment on the part of the Federal Government than at present to serve as an effective balance wheel through redistribution of resources.

Table 6.5 includes an estimate of the funds devoted to each function. In the table each program is identified with a primary individual function. Other secondary functions of each program may also be important if the Federal Government is performing a dual function. The largest percentage of funds goes to the role of stimulation (44 percent), which is in agreement with the pronouncement by the Bureau of Education for the Handicapped that Federal policy is to stimulate state and local participation in special education.<sup>24</sup> Provision of services to achieve economies of scale or to internalize externalities receives 11 and 18 percent of the funds, respectively. The balance wheel funds for redistribution of resources account for only 9 percent of the special education budget and are part of larger balance wheel programs where budget levels may make this role practical. The Federal Government provides basic service support to only a very specialized group—those in

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of handicapped students nor a careful cost analysis of the resources actually flowing to the handicapped group. The estimate presented is also biased downward because it does not include state expenditures for teacher training as was done in the estimate of Federal expenditures.

<sup>23</sup> *Hearings*, p. 372.

<sup>24</sup> E. Martin, *Hearings*, p. 360.

**Table 6.6**  
**FEDERAL EDUCATION EXPENDITURES FOR THE HANDICAPPED,**  
**BY LEVEL OF INSTRUCTION**

Program	Preschool, Elementary	Secondary	Post- Secondary and Higher
Education EHA-B <sup>a</sup>	28.1	9.4	---
ESEA-Title I			
Local Education Agencies <sup>b</sup>	21.0	7.0	---
89-313 <sup>c</sup>	28.2	28.2	---
ESEA-Title III <sup>b</sup>	15.1	4.9	---
Headstart	33.4	---	---
Vocational Education Act	---	28.4	10.0
Higher Education Act	---	---	0.4
Federal Schools for Deaf			
Gallaudet College	---	---	7.9
NTI for Deaf	---	---	2.9
Kendall School	1.2	---	---
Model Secondary School	---	2.5	---
Special Target Groups			
Deaf-Blind Centers	7.5	---	---
Early Education	7.5	---	---
Learning Disabilities (EHA-C) <sup>e</sup>	2.3	---	---
Instructional Support			
Teaching Personnel			
EHA-DB	26.3	8.8	---
Education Professions Develop- ment Act <sup>b</sup>	4.6	1.5	---
Regional Resource Centers (EHA-C) <sup>b</sup>	3.6	---	---
Media			
EHA-pb	7.9	2.6	---
American Printing House for the Blind <sup>b</sup>	1.2	0.4	---
Library of Congress <sup>d</sup>	---	1.0	---
Research			
Research (EHA-E) <sup>b</sup>	11.0	---	---
<b>Total</b>	<b>198.9</b>	<b>94.7</b>	<b>21.2</b>
<b>Percent</b>	<b>63.2</b>	<b>30.1</b>	<b>6.7</b>

<sup>a</sup> Seventy-five percent of those served in this program were in preschool or elementary school. It was assumed that expenditures were proportional to the number of students served. See Bureau of Education for the Handicapped, *FY 1970 National Report*, p. 102 of Title VI-A section.

<sup>b</sup> No reference could be found showing the age distribution of the recipients of the services provided in some programs accounting for about one-third of all expenditures, including this program. It was assumed that the expenditure pattern followed that of the handicapped population served under EHA-B.

<sup>c</sup> Approximately 50 percent of those served are 12 years of age or younger. Since grants are based on Average Daily Attendance at the schools, Federal expenditures are assumed to be directly proportional to the number served in each age group. See *National Report*, p. 47, on Public Law 89-313.

<sup>d</sup> Only 4 percent of the readers in this program are under 12 years old. (See Nelson Associates, *A Survey of Reader Characteristics, Reading Interests, and Equipment Preferences: A Study of Circulation Systems in Selected Regional Libraries*, Washington, D.C., 1969, p. 3.) We assume nearly all funds went to secondary school students.

<sup>e</sup> Learning disabilities are most pronounced among the very young. It was assumed that nearly all of the other centers served the same population.

state-operated or state-supported facilities for the handicapped—and this accounts for 18 percent of the special education budget. Even here, however, the size of the basic support grant is small in comparison with the total cost of operating most of these institutions, especially the residential ones. The grant is approximately \$450 per child while the typical per-student residential school cost is \$4,500 per year.<sup>25</sup>

**Expenditures by Type of Disability.** The great bulk of Federal expenditures for education of the handicapped is not allocated on a categorical basis to any specific handicapped group. Table 6.7 presents an estimate of the amount of money that is specifically allocated to a disability, 92 percent is noncategorical aid.

Table 6.7

## FEDERAL EXPENDITURES ON EDUCATION OF THE HANDICAPPED

Type of Handicap	Expenditures
Blind (American Printing House for the Blind) .....	\$ 1,580,000
Deaf (Federal Schools for the Deaf) .....	14,531,000
Deaf-Blind (Model Centers for the Deaf-Blind) .....	7,500,000
Learning disabled .....	2,250,000
Noncategorical for type of disability .....	289,025,000

When the money is not earmarked by the Federal Government, the state governments are allowed to spend according to their own preferences among disabilities—subject to Federal review, of course. Table 6.8 presents an estimate of how the funds are allocated among the various handicapping conditions for two Federal programs, EHA-B and P.L. 89-313.

The table shows that nearly half of the Federal funds for these two programs goes to the mentally retarded, split fairly evenly between the trainable and educable. Only 13.5 percent of the funds go to the emotionally disturbed, and there is some evidence that even this proportion is overestimated. In the states that were visited in the course of the study (Arkansas, California, Illinois, Massachusetts, and Wyoming), some of the emotionally disturbed—primarily adolescents—could be more accurately defined as socially maladjusted. It was also brought out in the interviews that many of these children were multihandicapped, but not reported as such. For example, many of the children in residential schools for the blind or deaf may also be mentally retarded. Therefore, the clear distinctions among handicapped groups shown in Table 6.8 are somewhat illusory.

The distribution of funds to handicapped groups does not necessarily reflect the number of children served in each group. In the EHA-B program, large differences in the number served for a given level of expenditure can be expected because of the large variances in the unit service costs among handicapping conditions. Under the institution program (P.L. 89-313), Federal funds are based on a school's ADA. Vari-

<sup>25</sup> See R. A. Rossniller, James Hale, and Lloyd Froehrich, *Educational Programs for Exceptional Children: Resource Configurations and Cost*, University of Wisconsin, Madison, Wisconsin, 1970, for a discussion of residential school costs.

Table 6.8

**DISTRIBUTION OF FEDERAL EXPENDITURES FOR EHA-B AND  
P.L. 89-313 BY HANDICAPPING CONDITION<sup>a</sup>**

Type of Handicap	EHA-B	P.L. 89-313	Total
Mentally retarded, trainable	10.0	39.5	26.3
Mentally retarded, educable	29.3	13.8	20.8
Hard of hearing	5.6	1.0	3.1
Deaf	6.4	16.6	12.0
Speech impaired	9.1	1.1	4.1
Visually impaired	4.4	6.4	5.5
Emotionally disturbed	11.4	15.1	13.5
Crippled	3.5	3.3	3.3
Learning disabled	12.6	0.9	6.1
Other health impaired	7.7	2.3	4.7
<b>Total</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>

<sup>a</sup>Estimates are from the Bureau of Education for the Handicapped, *Aid to States*, Branch Information System, National Report, EHA-B, FY 1970, p. 8; and 89-313, p. 9.

ances in the number served under this program come about because of the difference in the average length of stay at a school experienced by each handicapped group. A trainable mentally retarded person, for example, is likely to stay at an institution for a whole academic year. In this case, ADA and the number served are likely to be nearly identical. An emotionally disturbed child is less likely to stay for an extended period. He could receive services and then be returned to the regular school system. One school for the emotionally disturbed visited during the study, for example, had an ADA of 14, but served over 200 children during the year. The Federal formula for distributing funds to the states under P.L. 89-313 creates an incentive for longer treatment periods as opposed to intensive care. The size of this impact on the type of treatment or its effect on the children has not been measured.

## **SPECIAL EDUCATION PROGRAMS IN THE STATES**

Resources for education of the handicapped are largely state and local. Operation of institutions for mentally retarded, blind, and deaf youth are an integral part of education programs in most of the states. In terms of money and children served, however, the larger state program is one of direct transfer of funds to local school districts or private schools for operation of special education programs.

This subsection describes the programs sponsored by the states in terms of the number of people affected and the amount of funds devoted to each program. From the standpoint of Federal policy, however, it is perhaps more important to attempt to determine why state programs are the way they are. That is, we will examine the determinants of spending on special education. If some states spend more, because of income, for example, there may be a priori evidence for the need of Federal

redistribution of resources. If states are spending less because special education is not mandated, the call for Federal expenditures is less clear.

To compile this description of programs, we used three different data collection methods. First, we visited five states to obtain background information on a cross section of state programs. Second, we sent a questionnaire to all the states, requesting information on their programs for education of the handicapped (see Appendix D). Third, we used reports filed with the Federal Government by the State Education Agencies on their programs.

Although the questionnaires provided a large volume of information, they were not an entirely satisfactory method of gathering information. Some states supplied excellent responses, but many did not. An accurate national picture could not be compiled from the returned questionnaires. Therefore, those data were used mainly as checks against information supplied to the Federal Government, and for examples of different kinds of programs that exist in the states. These latter data should prove useful in preparing a subsequent Rand report on hearing and vision programs. In all but a few cases the states did not have any more evaluation information than that required on Federal reporting forms, so using Federal data did not mean a great loss of information. Detailed data on the resource configuration and effectiveness of individual programs are generally not available at the state level, and would have to be obtained by surveying individual districts. Such a survey is outside the scope of this report, but is included in other work being sponsored by the Bureau of Education for the Handicapped.<sup>26</sup>

### State and Local Expenditures

One difficulty in analyzing program expenditures for educating the handicapped is the lack of reliable data. Much of special education is intermingled with the regular school program, making it difficult to identify the additional cost of special education. Moreover, in the residential schools, where the handicapped are isolated from the regular program, only a fraction of the total cost goes for instruction. This fraction cannot be easily identified in the financial records of the schools.<sup>27</sup>

Estimates of expenditures on special education, then, are not very reliable and will vary from source to source depending on the assumptions made about allocating cost between the regular and the special programs. Table 6.9 presents estimates of state and local spending on education of the handicapped that were prepared by personnel in the various state departments of education.<sup>28</sup> While the estimates are not precise, they are valuable in two ways. First, they give an order of magnitude picture of the total amount of funds being devoted to education of the handicapped. This is useful in assessing the size of the program against the size of the problem.

<sup>26</sup> A report titled "Evaluation of an Audio States Program for Education of Handicapped Children" is being prepared by Exotech Systems, Inc. While it would have been of great benefit to draw on this research, it was not available in time for inclusion in this report.

<sup>27</sup> See Rossmiller, Hale, and Froehlich, p. 41.

<sup>28</sup> These estimates were taken from the state plans submitted in 1972 by each state to the Bureau of Education for the Handicapped. From discussions with personnel in various states responsible for making these estimates, it became clear that their methodology could not lead to accurate estimates. For example, one state estimated the cost by multiplying the number of handicapped served by \$1000, almost regardless of the disability. In other cases it appears that when the State Education Agency was not responsible for residential schools, the costs of these schools were excluded from the estimates. The analysis presented in this section should be interpreted with this data reliability problem well in mind.

Table 6.9  
ESTIMATED STATE AND LOCAL EXPENDITURES ON EDUCATION OF THE HANDICAPPED, 1972-73<sup>a</sup>  
(in thousands)

State	Deaf-blind		Total of Hearing	Total	Speech Impaired	Visually Impaired	Emotionally Disturbed	Crippled	Learning Disabled	Other Health Impaired	Total
	Male	Female									
Alabama	900	539	300	581	800	161	454	327	504	427	12,088
Alaska	5	44	181	105	190	84	402	85	1,058	127	4,954
Arizona	385	66	20	0	609	16	1,026	209	483	803	12,408
Arkansas	91	49	0	134	46	93	115	142	31	5,312	
California	1,277	6,900	11,000	15,500	15,725	7,000	0	81,900	78,750	0	298,435
Colorado	1,084	5,134	0	0	2,046	341	1,876	1,181	4,996	2,508	20,067
Connecticut	1,511	8,416	2,970	0	3,282	1,157	6,770	1,255	8,777	0	40,278
Delaware	244	7,524	13	475	540	0	1,228	540	1,552	1,593	9,805
Florida	5,308	7,728	2,160	2,480	5,060	1,120	9,040	4,432	6,256	0	71,520
Georgia	2,770	11,412	834	1,765	11,162	3,915	4,762	0	2,860	3,227	42,475
Hawaii	1,358	2,871	95	607	85	96	493	383	1,221	224	7,367
Idaho	430	1,562	10	5	518	7	0	11	622	0	3,191
Illinois	8,005	47,245	1,165	11,850	18,195	2,430	23,385	12,675	15,585	5,325	174,585
Indiana	5,669	13,399	143	1,432	3,988	1,362	983	717	267	118	28,617
Iowa	1,750	7,120	1,080	360	4,270	380	2,875	655	1,320	778	24,565
Kansas	1,186	6,949	399	0	1,917	185	1,165	1,082	738	554	15,876
Kentucky	1,112	6,074	619	258	4,681	147	889	1,829	1,252	0	18,935
Louisiana	650	0	700	40	1,500	70	600	140	850	400	10,450
Maine	580	740	26	805	297	207	173	251	314	106	3,113
Maryland	3,265	4,436	613	462	1,117	48	1,307	438	6,893	4,987	24,616
Massachusetts	1,421	19,189	409	4,267	3,489	1,941	12,402	3,489	6,763	0	55,455
Michigan	17,397	48,064	5,296	6,970	12,715	494	9,893	8,715	0	0	153,896
Minnesota	6,438	15,167	0	4,987	4,555	1,050	19,800	1,507	19,800	130	61,547
Mississippi	553	5,010	121	806	506	319	28	303	373	2	8,023
Missouri	0	19,807	652	0	33,351	149	808	712	912	1,162	58,253
Montana	0	1,100	145	300	1,335	250	100	180	0	450	4,700
Nebraska	4,408	6,106	412	1,078	11,939	613	597	528	155	0	26,624
Nevada	35	1,687	125	42	506	50	1,062	250	0	0	4,247
New Hampshire	1,288	2,724	118	979	550	211	1,181	75	2,034	312	9,476
New Jersey	5,504	17,601	840	1,993	8,400	2,184	9,072	756	5,292	6,132	84,000
New Mexico	1,041	0	154	132	1,490	194	776	112	562	135	8,562
New York	42,173	194,477	4,389	15,666	14,837	12,889	92,744	44,170	0	15,309	401,650
North Carolina	2,519	1,074	2,69	1	3,673	2,135	1,391	673	762	283	31,316
North Dakota	244	1,157	19	0	731	40	154	643	133	49	3,152
Ohio	29,755	97,199	0	1,000	16,206	2,400	0	5,000	24,400	7,800	174,200
Oklahoma	705	5,183	172	37	1,098	255	187	112	2,347	187	10,797
Oregon	1,687	4,400	440	632	1,648	1,919	706	390	1,200	616	12,239
Pennsylvania	13,493	50,862	1,336	1,518	13,544	2,899	5,566	6,287	0	5,692	100,878
Rhode Island	1,130	1,840	1,470	0	729	300	1,320	150	3,800	100	10,899
South Carolina	779	8,761	227	106	1,326	188	908	293	681	0	13,448
South Dakota	256	1,593	100	500	200	400	200	400	250	75	4,325
Tennessee	2,307	11,465	350	150	1,900	295	975	2,970	2,700	3,600	28,452
Texas	6,814	33,085	1,375	1,525	5,969	2,114	5,072	2,913	16,918	10,449	85,777
Utah	1,080	3,546	145	235	1,682	97	1,668	166	4,769	0	14,348
Vermont	475	1,064	408	251	192	105	217	349	299	98	3,190
Virginia	3,968	18,939	1,774	0	2,130	0	2,551	846	1,000	1,170	42,555
Washington	3,478	6,240	442	609	2,608	254	2,684	551	991	1,013	30,051
West Virginia	583	1,166	112	19	607	26	24	102	26	168	4,814
Wisconsin	7,670	7,815	1,610	3,718	6,441	3,275	4,567	2,015	2,205	652	64,509
Wyoming	240	1,029	31	186	371	73	192	38	564	20	3,256
D.C.	3,190	1,591	826	557	1,104	328	1,994	817	270	1,037	11,919
Total	260,000	841,000	55,000	91,000	551,000	66,000	258,000	210,000	250,000	84,000	2,364,000
Percent	11	35	2	4	11	3	11	8	11	4	100

NOTE: Column totals do not add to the United States total. When costs are shared among disabilities, they are listed in the more than one category on the Federal reporting form. Costs in this category were arbitrarily distributed among the disability totals in proportion to the total state and local expenditures for that disability.

<sup>a</sup>These statistics were compiled from *Report on the Estimated Activities of the Federal Government for the Education of the Handicapped*, an annual report submitted to the Bureau of Education for the Handicapped by the fifty states under EHA-8 completed forms from two states were not available.

<sup>b</sup>Colorado did not break down its total expenditures by disability. It was assumed that 1972-73 expenditures followed the same pattern as in 1968-69. All 1968-69 data were obtained from *Summary Statistics-Expenditures, FY 1969*, State-Federal Information Clearinghouse for Exceptional Children, Arlington, Va.

<sup>c</sup>Ohio reported only state expenditures. It was estimated that state expenditures were 50 percent of the total, as that percentage is typical of the region.

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Second, these figures show the distribution of funds among handicapping conditions, thus enabling the planner to see where funds are going and to locate any apparent gaps in service in a particular state or nationwide.

The table shows that, of the total \$2,364,000,000 expended, a large percentage of state and local funds goes for education of the mentally retarded. Approximately one billion dollars are spent by these levels of government on both the trainable and educable mentally retarded. In other terms, 46 percent of the state and local effort, as measured by dollars expended, is going to the mentally retarded. The emotionally disturbed receive 11 percent of state and local funds. The speech impaired, learning disabled, and crippled groups each receive between 8 and 11 percent of the funds.

### Number of Children Receiving Educational Services

The total number of students served is also a measure of the size of the program, and the number served as a percentage of those who require special education services is a measure of the gaps in service that may exist in particular states or in particular handicapping conditions.

Estimates of the total numbers served, by handicap, are presented in Table 6.10. The total number of handicapped children receiving service is estimated at 3.046 million, or 6.6 percent of the total enrollment in publicly supported elementary and secondary schools.<sup>29</sup>

Figures on total enrollment for special education service are more revealing when they are shown as the number receiving service as a percentage of those who require service. Wholly reliable estimates of the size of the handicapped youth population are not available. For our purposes, however, it seems sufficient to use the estimates published by the Bureau of Education for the Handicapped. The incidence rates shown in Table 6.11 for school age youth were used in determining the number of handicapped children to be served. The incidence rate for all handicaps combined is 10.1 percent.

These particular estimates are low compared with some of the percentages used by the states to estimate the number needing service. Compelling evidence of the state-by-state variation in the definitions of various types of handicaps or of variations in the actual incidence rates is shown in Table 6.12, which lists the percentage served by state and by disability. The table shows too many cases of over 100 percent of the population being served for the definitions and incidence levels to be consistent across the states. An example would be separating hard-of-hearing and deaf children by different definitions.<sup>30</sup> From the data in Table 6.12, from the site visits taken during this study, and from the state survey, it appears that the percentage that are learning disabled and emotionally disturbed may be seriously under-

<sup>29</sup> K. A. Simon and W. V. Grant, *Direct of Educational Statistics*, U.S. Department of Health, Education and Welfare, DHEW Publication No. (OE) 72-45, 1971, p. 24.

<sup>30</sup> It could also be argued that the states are overestimating the number actually served. In one state, for example, the estimate was derived by multiplying the number of special education classes offered by the maximum permissible class size. This would lead to an upward bias in the estimates. There is no evidence, however, that this was just an isolated example. Some states combined their hard of hearing and deaf into one category. This gives the impression that they are serving a high percentage of one of the disabilities and zero percentage of the other. This same phenomenon occurs with the learning disabled, retarded, and the emotionally disturbed. The reader is advised that some of these coverages of over 100 percent are due to differences in classification.

Table 6 10

HANDICAPPED CHILDREN RECEIVING EDUCATIONAL SERVICE, BY DISABILITY

State	Mentally Retarded		Partial Hearing	Deaf	Speech Impaired	Visually Impaired	Emotionally Disturbed	Crippled	Learning Disabled	Other Health Impaired	Total
	Transactable	Inadmissible									
Alabama	2,106	11,886	167	277	8,550	626	616	652	620	50	28,470
Alaska	140	906	160	50	70	35	166	40	400	50	2,611
Arizona	932	6,131	60	0	6,090	61	799	163	376	473	15,112
Arkansas	1,800	7,137	0	342	5,016	224	329	166	845	157	18,430
California	11,000	47,000	1,300	1,000	100,000	2,500	0	50,000	60,000	0	112,000
Colorado	0	8,584	1,216	450	22,184	293	6,541	533	0	1,250	42,199
Connecticut	2,962	5,260	1,571	0	11,033	654	9,044	2,442	9,500	0	44,261
Delaware	630	2,800	8	155	4,000	95	910	290	920	580	10,318
Florida	1,450	26,000	11,410	1,430	31,590	1,050	7,500	7,000	9,000	0	100,400
Georgia	1,683	31,666	1,085	630	28,432	1,100	3,479	0	2,557	4,108	76,540
Hawaii	733	2,409	152	176	1,960	51	193	155	1,139	100	9,268
Idaho	48	1,700	53	709	4,766	80	0	32	1,908	0	10,160
Illinois	7,000	17,840	9,100	2,400	97,000	1,617	76,510	7,600	12,483	130	196,970
Indiana	5,470	18,968	202	927	48,616	374	745	402	190	106	75,948
Iowa	1,450	7,883	410	70	20,414	280	9,464	854	1,400	970	43,213
Kansas	945	7,135	256	0	16,000	180	1,100	770	1,170	1,300	29,656
Kentucky	1,464	3,560	1,040	208	19,000	143	850	2,044	984	0	19,373
Louisiana	1,000	15,000	100	0	32,000	150	1,000	200	1,750	1,000	50,050
Maine	665	2,900	98	116	1,700	283	320	405	1,800	104	9,609
Maryland	1,285	21,180	630	484	4,435	448	1,307	638	6,893	987	61,948
Massachusetts	1,969	12,100	1,087	1,377	32,934	730	1,145	5,000	16,480	0	75,528
Michigan	41,522	44,193	2,199	8,848	91,408	1,818	6,181	7,519	0	0	164,168
Minnesota	6,284	12,500	0	1,000	28,000	400	27,000	500	0	400	55,344
Mississippi	886	8,633	118	110	9,556	192	74	580	528	60	20,927
Missouri	0	19,477	612	0	11,251	129	808	712	912	0	32,001
Montana	510	1,000	53	60	1,000	103	600	750	1,111	45	6,554
Nebraska	2,240	6,543	241	305	17,043	746	913	318	1,307	116	28,891
Nevada	300	1,800	10	30	2,800	50	950	200	0	0	6,000
New Hampshire	619	1,999	263	213	5,050	108	463	50	1,304	244	10,313
New Jersey	6,043	20,661	691	1,654	61,023	1,875	76,224	1,178	5,748	24,625	149,772
New Mexico	1,000	4,500	75	765	2,980	383	276	175	625	150	10,111
New York	17,961	49,844	3,666	2,984	118,608	3,069	27,977	11,938	0	5,670	236,715
North Carolina	1,291	38,960	1,625	0	34,000	1,100	2,000	515	2,500	600	81,853
North Dakota	781	1,140	12	0	4,500	60	1,217	115	1,117	160	6,601
Ohio	14,760	54,529	0	4,416	91,035	1,089	0	1,650	16,645	6,576	191,410
Oklahoma	1,241	11,013	146	462	13,597	157	180	158	5,123	1,511	11,837
Oregon	887	4,670	32	398	14,500	250	650	444	7,700	700	29,844
Pennsylvania	6,200	43,113	1,500	600	80,500	2,350	2,700	2,187	0	1,980	140,450
Rhode Island	300	2,500	400	0	7,200	281	600	150	1,800	300	19,311
South Carolina	1,000	40,500	830	150	19,000	600	8,000	1,250	2,000	0	53,550
South Dakota	600	7,800	150	500	5,000	150	400	360	3,000	150	11,900
Tennessee	2,850	5,700	350	150	70,000	275	650	3,300	2,700	6,800	50,575
Texas	10,998	44,100	1,830	410	85,081	1,879	6,884	4,052	14,291	15,467	196,210
Utah	1,441	3,258	29	284	9,928	155	1,793	103	9,402	0	25,855
Vermont	113	1,181	236	87	1,440	86	430	72	1,049	300	5,194
Virginia	7,110	16,845	1,040	0	17,775	0	1,485	1,092	2,500	4,497	47,524
Washington	7,844	10,784	349	412	2,278	245	4,054	509	2,589	1,061	24,686
West Virginia	950	8,655	40	10	8,000	37	45	100	45	198	16,180
Wisconsin	1,985	17,474	60	373	32,352	436	3,580	632	851	2,433	58,596
Wyoming	150	710	65	49	2,100	165	170	280	620	100	4,609
D.C.	1,476	2,177	181	191	5,660	113	756	230	178	292	11,276
Total	148,000	54,193	15,400	9,000	1,181,400	28,000	199,000	178,000	230,000	95,000	3,046,000
Percent	4.5	24.9	1.8	1.0	45.4	0.9	6.5	4.2	7.5	3.2	100.0

SOURCE: Estimated 1974 students to be served from 1974-75. Data for 1974-75 are based on 1974-75 data.

Table 6.11  
INCIDENCE RATES FOR HANDICAPS  
(In percent)

Speech impaired .....	3.5
Emotionally disturbed .....	2.0
Mentally retarded .....	2.3
Learning disabled .....	1.0
Hard of hearing .....	0.5
Deaf .....	0.075
Crippled or other health impaired .....	0.5
Visually impaired .....	0.1
Multihandicapped .....	0.06

SOURCE: *Short Term Analysis Issues in Education for the Handicapped*, prepared by the Office of Program Planning and Evaluation, Bureau of Education for the Handicapped, and Exotach Systems, Inc., November 1971.

estimated Other incidence estimates for these are 3 percent emotionally disturbed and 5 percent learning disabled.<sup>31</sup> If these latter estimates were used in the calculations, the percentage served of all handicaps across the country drops from 59 to 39 percent. Depending on the incidence levels, then, one can get a vastly different picture about how well the country is doing in meeting the educational needs of the handicapped.

The percentage served also depends on the assumptions about the proper base population to use. It could be argued that the base population should be the age cohort from 0-21. Certain types of handicapped children below the age of 5 need special educational services, and hence should be included in order to estimate those needing service. Another line of reasoning is that the schools can only serve those who attend. Applying the handicapped incidence rates to the school population is one way of estimating how many handicapped children are in the regular school system and are not receiving special educational services, but are receiving normal instruction.<sup>32</sup>

Using public school attendance population as a base also eliminates the bias introduced by the implicit assumption, which is made when general population data in an age range are used as a base, that those not served in the public schools are not served at all. Table 6.13 shows the percentage served for various base populations. The size of the public school population is measured in three ways—enroll-

<sup>31</sup> Higher incidence rates than those used in this report are being reported by some states in their estimates of the size of the handicapped population (See *Description of State Special Education Programs, FY 73* submitted to the Bureau of Education for the Handicapped, U.S. Department of Health, Education and Welfare.) Nebraska estimates that 5 percent are emotionally disturbed and 7 percent are learning disabled. North Dakota uses 3 percent emotionally disturbed and 5 percent learning disabled. One study reported finding the use of incidence rates up to 20 percent for the learning disabled (M. Fleischmann, *Report of the New York State Commission on the Quality, Cost and Financing of Elementary and Secondary Education*, Vol. II, Albany, N.Y., 1972, p. 944). There are also lower estimates of incidence, as low as 0.05 percent for emotionally disturbed and 0.5 percent for the learning disabled (Rossiniller, Hale, and Frohreich, p. 121).

<sup>32</sup> The implicit assumption in this estimation method is that the incidence rates are the same for the school population as they are for the general population.

Table 6.12

ESTIMATED PERCENT OF HANDICAPPED SERVED BY SPECIAL EDUCATION PROGRAMS, 1972- 3

State	Mentally Retarded	Hard of Hearing	Deaf	Speech Impaired	Visually Impaired	Functionally Disturbed	Crippled and Other	Learning Disabled	Total All Handicaps
Alabama	75.03	7.44	111.10	26.20	45.68	3.30	21.28	6.65	30.55
Alaska	41.95	29.69	61.85	1.86	32.47	7.70	16.70	37.11	18.70
Arizona	63.65	2.47	0.00	35.85	12.57	8.23	26.21	7.75	31.25
Arkansas	80.29	0.00	91.76	28.80	45.07	3.31	20.24	17.00	33.14
California	50.47	12.02	80.11	74.39	50.07	0.00	232.31	120.16	63.02
Colorado	63.51	58.40	102.33	112.72	39.65	53.10	60.68	0.00	71.98
Connecticut	46.58	41.00	0.00	48.52	60.46	58.93	63.17	123.81	57.82
Delaware	100.92	1.08	139.05	76.89	63.92	30.61	104.96	61.90	69.60
Florida	79.64	141.93	116.10	59.69	65.30	23.32	87.07	55.98	62.60
Georgia	125.71	17.75	68.71	65.98	89.97	14.23	67.20	20.91	62.76
Hawaii	67.02	14.92	115.14	55.51	25.02	4.73	25.02	65.70	45.59
Idaho	47.80	5.32	72.89	68.58	40.12	0.00	3.21	145.85	51.08
Illinois	68.26	63.67	115.67	96.95	56.56	46.37	90.39	43.60	72.58
Indiana	76.58	2.89	89.27	100.32	27.01	2.69	7.34	1.37	54.99
Iowa	54.71	11.59	12.58	78.64	37.75	63.80	49.18	18.87	58.41
Kansas	66.06	8.96	0.00	80.02	31.51	11.38	72.47	20.48	52.04
Kentucky	77.49	24.68	45.55	64.40	16.96	5.04	48.50	11.67	46.83
Louisiana	60.65	5.77	12.83	87.96	14.43	4.81	23.09	16.37	49.14
Maine	59.79	7.56	172.82	40.78	109.17	6.17	39.12	30.86	37.16
Maryland	102.05	12.21	59.19	61.80	43.19	6.30	104.61	66.46	59.87
Massachusetts	43.53	15.47	130.61	66.94	51.93	11.90	78.25	117.24	53.86
Michigan	95.80	19.61	45.12	106.83	74.30	12.63	61.62	0.00	67.26
Minnesota	69.52	0.00	152.42	77.74	38.11	130.99	17.15	0.00	71.96
Mississippi	65.19	3.72	65.18	43.05	30.28	0.58	20.18	8.33	33.08
Missouri	73.13	11.03	0.00	81.40	10.92	3.42	31.71	7.72	49.20
Montana	49.01	5.41	40.80	43.72	52.53	15.30	81.09	88.39	43.74
Nebraska	92.99	14.51	105.01	125.77	63.52	11.79	26.54	33.64	74.79
Nevada	65.40	11.08	31.67	63.34	39.59	37.61	31.67	0.00	47.62
New Hampshire	60.27	27.85	150.38	76.40	57.19	12.26	31.13	69.05	54.74
New Jersey	64.66	7.70	122.82	97.10	104.42	73.16	287.40	32.01	83.62
New Mexico	79.08	4.85	114.14	27.50	124.37	4.46	17.77	20.19	34.04
New York	62.71	16.84	91.37	77.86	70.48	32.07	80.87	0.00	54.50
North Carolina	135.82	24.89	0.00	73.49	98.34	7.56	16.87	18.91	63.59
North Dakota	35.28	1.37	0.00	73.46	34.28	34.77	31.43	63.82	49.27
Ohio	104.94	0.00	115.29	94.35	38.65	0.00	58.40	66.18	68.12
Oklahoma	63.48	4.43	73.38	46.28	18.70	1.07	39.76	63.43	40.40
Oregon	45.28	12.18	99.45	77.64	46.85	6.09	42.88	131.18	56.03
Pennsylvania	73.56	10.27	27.38	78.72	70.16	3.76	28.52	0.00	48.19
Rhode Island	54.35	375.01	0.00	91.84	125.45	13.39	40.18	169.65	86.52
South Carolina	131.15	23.07	31.51	75.46	83.40	55.60	34.75	27.80	74.62
South Dakota	60.56	16.07	107.15	76.53	80.36	10.71	48.22	160.72	63.91
Tennessee	79.70	6.99	19.98	57.09	27.47	3.25	161.84	26.97	50.65
Texas	120.08	18.31	60.69	122.45	93.98	17.21	195.26	121.50	98.38
Utah	63.41	16.60	121.15	90.90	49.67	20.72	6.60	297.45	83.06
Vermont	55.47	40.10	99.05	35.13	73.44	18.36	63.53	89.58	44.46
Virginia	69.57	17.04	0.00	42.42	0.00	6.20	93.37	20.88	39.60
Washington	65.16	7.94	62.47	7.40	27.86	23.05	35.71	29.56	28.14
West Virginia	74.02	9.05	9.05	51.71	8.37	0.51	13.48	1.02	36.70
Wisconsin	70.42	11.25	41.84	76.94	36.29	6.58	47.69	7.08	48.89
Wyoming	40.80	14.18	71.28	67.02	180.03	6.55	126.57	67.65	50.41
D C	96.57	34.41	154.84	97.80	68.71	22.98	63.48	7.78	68.73
Avg percent served	80.45	21.38	71.61	76.66	54.76	19.27	86.65	44.65	59.23

Table 6.13

PERCENT OF HANDICAPPED SERVED, ASSUMING  
DIFFERENT POPULATION BASES

Population Base <sup>a</sup>	Percent Served
General population	
Age cohort	
0-21 years .....	36
0-17 years .....	44
5-17 years .....	59
School population enrollment ....	65
ADM .....	68
ADA .....	71

<sup>a</sup> School population statistics are from *Digest of Educational Statistics, 1971*, National Center for Educational Statistics, 1972, p. 28. ADA and ADM estimates for 1970-71 were not available. These figure were estimated by taking 1967-68 ADA and ADM figures and multiplying by the growth in enrollment from 1967-68 to 1970-71. General population data are from the 1970 Census of Population. The implicit assumption in this estimation method is that the incidence rates are the same for the school population as they are for the general population of school age.

ment, average daily membership (ADM), and average daily attendance. ADM is a measure of the number of students who are supposed to attend class. ADA is a measure of those who actually attend. The difference, of course, is due to absenteeism.

When the population base is the general population age cohort that is served by the public schools, 5-17 years, the percentage served is considerably higher than when all youth (0-21) are taken as the base.<sup>33</sup> From the preceding discussion we can conclude that the public schools are serving a majority, but not nearly all, of those handicapped children of traditional school age. But there is great variation across the states and across the types of handicaps, leaving much room for improvement in the amount and equity of special education services delivered. Many handicapped youth are not being served, however, because they are either too old or too young by traditional school age standards, or have dropped out or never been admitted to the public school.<sup>34</sup> If one assumes that the general population 0-21 age cohort is the proper population to use, then some 64 percent of the handicapped are not being served. This is approximately 5.3 million children. If one assumes the public schools should be serving just those enrolled (age 5-17), neglecting the private school population, then perhaps 1.7 million children are not being served. No matter what one

<sup>33</sup> An often quoted figure is that 60 percent of the handicapped are unserved by special education. This calculation uses the 0-20 age cohort as the base population. Incidence rates for ages 0-4 are assumed to be one half of those for the 5-20 age cohort. See "Short Term Analysis Issue in the Education for the Handicapped," prepared by Bureau of Education for the Handicapped, and Exotech Systems, Inc., November 1971.

<sup>34</sup> We were unable to locate reliable data on the number served in private schools.

assumes, many youth are unserved, and if the policy were to increase the number served, then a two-pronged attack is needed. First, special education for those in school would have to be expanded. Second, younger and older youth population (generally not considered the province of the public school) would have to be included in the programs.

The above analysis also demonstrates that numbers can be selected to substantiate almost any position. In any event, policy should be based not only on the number served, but also on the type and quality of service being received. The variation in the amount of resources input to the program is discussed later in this section. Though this would be a logical place to discuss variation in program output, such a discussion is not within the scope of this report. Even if it were, it would not be too enlightening because of the dearth of information on the effectiveness of special education programs.

Though it is difficult to get an estimate of the percentage served because of the various assumptions underlying each estimate, we can say something about the percentage served for each handicapped group, holding the assumptions constant. Table 6.12 reveals that a relatively large percentage of the mentally retarded are being served compared to the emotionally disturbed and the learning disabled, even using the low estimate incidence rates for the latter two disabilities. The hard of hearing and the emotionally disturbed are the most underserved categories. Table 6.12 also shows the variation in the percentage served among states. The minimum percentage served in the mentally retarded category is 35 percent in North Dakota, but only 13 states fall below 60 percent served. The chances that a mentally retarded child will be served are fairly good no matter what state he lives in. The same cannot be said for the emotionally disturbed. Because of the variation in the percentage receiving service for the emotionally disturbed, the probability that an emotionally disturbed child will be served varies greatly from state to state, and the variation among school districts may be even greater than among states. A look at intrastate programs, however, is outside the scope of this research.

The last column in Table 6.12 shows that there is a large variation in the percentage served among states. An initial attempt was made to analyze this variation by using a simple linear regression model. It was hypothesized that the percentage served was a function of whether special education was mandated, the population density of the state, and the per capita income in the state. The estimated model was

$$P = 52.5 + 8.9M + .024D - .001I \quad R^2 = .20,$$

(1.8)      (2.1)      (3)

where P = percent served,  
 M = 1 if special education is mandated 0 otherwise,  
 D = population per square mile,  
 I = per capita income

The model shows that the only significant variables (10 percent level) were the population density and the mandated variables. That is, the percentage served seemed to be the same regardless of per capita income after the data were adjusted for population density and program mandate. One hypothesis that is in accord with population density being significant is that a lack of a sufficient number of hand-

icapped youth in low-density areas makes special education an impractical alternative because of the high cost of serving a small number of children. This hypothesis is explored further in the next subsection on determinants of state and local spending. The low value of the coefficient of determination implies that other forces determining the number served have not been incorporated into the model. More research is needed to isolate the determinants of the percentage served in order to help design an effective policy for increasing that percentage.

### State and Local Expenditures Per Handicapped Student

The percentage served in any handicapped category is not an adequate indicator of the quality of the program that is being offered. Rossmiller found that the costs for special education vary quite widely. In the sample districts used in that survey, the cost per pupil for a program for the educable mentally retarded varied from \$826 to \$2358.<sup>15</sup> The same wide variation was found among the states. Table 6.14 presents the average state and local special education expenditure per handicapped child served, by type of disability. The United States average is \$776 per handicapped student. The reported average annual special education expenditure for a speech-impaired student is \$170, for a deaf child it is \$3067. The reported variation across the states for all handicapped children is extreme: from \$213 in the lowest state to \$1705 in the highest (excluding Alaska). The reported variation across states within a single handicap is even more striking. For example, the range for deafness is from less than \$100 per pupil to nearly \$10,000 per pupil annually; however, these figures understate the amount of funds going to the handicapped. They also receive services from the regular education program, and in some states these services may not have been reported in estimating the funds for educating the handicapped. The estimates presented here are the funds reported by the states for special education only. We do not believe these reported data represent the total cost of educating children who presently receive some special education services. As an example of data inconsistencies, the reported expenditures for special education averaged \$776, which is less than the average expenditures of \$858 for the education of nonhandicapped youth.<sup>16</sup> Other sources use much higher estimates of the total average per-pupil expense for educating handicapped children, e.g., the U.S. Senate Labor and Public Welfare Committee uses \$1470.<sup>17</sup> Inspection of the budgetary data from the states broken down by type of handicap indicates that the expenditures are typically "line item" budget expenses identifiable as special education. Thus, for a speech-impaired student the reported \$170 is probably the excess cost of speech therapy above the cost of his education in a regular classroom. For a deaf child, on the other hand, the \$3067 reported expense is probably total rather than excess cost, since the deaf child would most typically be served in a special education classroom rather than in a regular classroom. If the speech-impaired are removed from the calculation of average per-pupil expenditures, the average figure jumps from \$776 to \$1271. Because of the lack of reliable special education cost data, total and excess costs are difficult to estimate. For instance, the total cost figure of \$1470 used by the Senate Committee

<sup>15</sup> Rossmiller, Hale, and Froehrich, p. 65.

<sup>16</sup> *U.S. Statistical Abstract* (U.S. Government Printing Office, Washington, D.C., 1971).

<sup>17</sup> As reported in "Handicapped School Children, Caught in School Aid Debate," *National Journal*, Vol. 5, No. 6, February 10, 1973.

Table 6-14  
ESTIMATED AVERAGE EXPENDITURE PER HANDICAPPED STUDENT SERVED, 1972-73  
(Dollars)

State	Mentally Retarded Trainable	Mentally Retarded Life-able	Hard of Hearing	Deaf	Speech Impaired	Visually Impaired	Emotionally Disturbed	Physically Impaired	Learning Disabled	Other Health Impaired	Average All Handicaps
Alabama	435	543	865	748	98	378	737	712	813	791	425
Alaska	1,964	491	2,181	2,100	2714	2400	2422	2125	2645	2,840	2,481
Arizona	1,140	1285	7000	0	100	2705	1284	1782	1285	1,688	870
Arkansas	606	218	0	1813	9	4121	213	788	188	87	425
California	2,508	1336	4900	3500	117	2800	0	1412	1313	0	951
Colorado	0	643	0	0	88	1464	101	2220	0	2,006	476
Connecticut	1,874	1620	1793	0	252	2494	749	1343	97	0	916
Delaware	2,683	903	1625	1065	135	0	1349	2700	160	2,747	950
Florida	1,452	1868	189	1771	150	1087	1205	633	695	0	712
Georgia	603	160	780	2770	385	3559	1369	0	1111	786	555
Hawaii	1,853	1171	625	3449	16	1882	2354	2471	912	2,240	795
Idaho	874	907	189	46	108	88	0	344	214	0	373
Illinois	1,251	1250	150	4778	188	1503	882	1688	1251	1,003	864
Indiana	1,044	548	715	1545	78	3642	1319	1784	1405	1,113	377
Iowa	1,207	929	2517	5143	209	1357	304	787	943	802	568
Kansas	1,255	885	1559	0	120	1028	896	1405	631	426	535
Kentucky	896	595	595	896	234	1028	1046	895	1272	0	481
Louisiana	650	370	711	400	47	487	600	700	500	400	213
Maine	842	255	285	2386	80	714	541	620	418	1,059	386
Maryland	1,000	260	1000	1000	50	1000	1000	1000	1000	1,000	397
Massachusetts	1,37	1582	431	1099	106	2660	3708	634	-10	0	734
Michigan	1,178	1044	2208	8157	189	2364	1601	1156	0	0	937
Minnesota	1,496	1213	0	474	149	2688	720	3014	0	325	837
Mississippi	624	581	1975	2600	53	1661	378	522	706	33	183
Missouri	0	1090	1090	0	1000	1000	1000	1000	1000	1,000	1004
Montana	980	688	2714	5600	508	2427	167	211	0	10,000	549
Nebraska	1,102	1010	957	3534	700	2492	982	1392	119	0	922
Nevada	1,250	1041	1786	2067	174	1000	1118	1250	0	0	708
New Hampshire	2,081	1363	449	4596	109	1854	2551	1500	1560	1,279	919
New Jersey	917	610	1216	1168	118	1165	345	642	921	249	561
New Mexico	1,000	900	893	498	500	499	1000	896	899	900	815
New York	1,250	2800	1700	5270	125	4200	3500	3700	0	2,700	1705
North Carolina	765	449	1683	0	88	1858	696	1307	305	972	373
North Dakota	1,344	933	1583	0	163	667	127	5591	119	306	366
Ohio	2,005	1826	0	2874	174	2204	0	3030	1309	1,186	910
Oklahoma	567	449	975	80	81	1624	1039	709	441	124	319
Oregon	1,913	1028	1354	1035	125	7676	1085	878	171	880	410
Pennsylvania	2,128	1176	891	2530	148	1414	2530	2875	0	2,875	718
Rhode Island	4333	770	333	0	100	1068	2200	1000	1000	333	563
South Carolina	649	427	273	588	63	330	125	234	341	0	256
South Dakota	417	750	667	3333	40	2667	500	3000	83	500	368
Tennessee	950	750	1000	1000	95	1000	1500	900	1000	750	561
Texas	821	726	751	1676	70	1125	737	724	696	676	435
Utah	1,299	1088	483	827	169	626	1260	1612	514	0	555
Vermont	1,358	884	873	2908	133	1223	505	4847	285	327	614
Virginia	1,718	1718	1718	0	111	0	1718	775	400	260	1095
Washington	1,101	654	1266	1478	1144	1037	662	1083	181	974	1218
West Virginia	648	478	570	633	76	703	533	1020	578	848	299
Wisconsin	1,925	182	238	9862	199	7511	2891	4664	2591	268	1101
Wyoming	1,600	1649	477	3796	173	442	1600	136	877	67	706
D.C.	2,161	733	2919	2916	196	2903	2638	3552	1109	3,551	1057
U.S. average	1,757	1045	916	3087	170	2186	1214	1510	1015	822	776



cited earlier uses the assumption that the excess cost of educating the handicapped child is one-half of the total cost. The factor of one-half and the total cost figure of \$1470 are reasonable estimates, if one considers that the cost of education is highly dependent on the teacher/student ratio, and that it is not unrealistic to have one-half as many handicapped students as regular students per teacher, on the average.

What the cost of special education should be is inextricably tied to the type and structure of the program (special classrooms, itinerant special teachers, etc.), proportions of handicapped youth being served, and the effectiveness of the program. Since very little is known of the relation between resources expended and the effectiveness of special education, one is forced to talk in terms of the cost if special education is delivered in a specified way. In a subsequent report, we will attempt to describe the cost of service to aurally or visually impaired youth as a function of factors such as the type and number of handicapped youth to be served, the type and size of teaching personnel and classrooms to be used, and the cost rates for teachers' salaries, buildings, equipment, and so forth. Such a cost model approach aids in understanding what proposed increases in Federal funds for special education will buy in terms of services delivered to children.

Part of the reported variation in expenditures across states is due to definitional problems in the types of handicapping conditions. Some states grouped their deaf and hard of hearing into one category, for example, while others did not. Such groupings will distort the amount spent on each disability. Some portion may also be attributed to different assumptions made about what costs to include in the cost-estimating procedures used by the states. One state, for example, estimated that service costs were \$1000 per student for most major types of disability. Still, most variation is probably due to the different resource levels provided in each state. Again, however, we are in a position of saying that some states pay more for special education, but we have virtually no information on whether these states are achieving more.

Another measure of state and local effort is the amount spent on education of the handicapped in comparison to the total number of children (handicapped and nonhandicapped) in the public school system. While a state may be spending a large amount per child served, it may not be serving a large percentage of the handicapped. By looking at the amount spent, normalized for total public school population size, we get a better idea of fiscal effort being put forth in each disability category.

Table 6.15 shows the average amount reported spent by each state on each handicap for each youth (handicapped and nonhandicapped) in the public school system. Only \$44 per total average daily attendance is spent on the handicapped, while the average expense for elementary and secondary education is \$858.

Table 6.15 also shows the coefficient of variation (CV) among the average reported expenditures for each disability. The CV is a measure of the dispersion of the distribution.<sup>22</sup> The larger the coefficient of variation, the greater the variation in

<sup>22</sup> The CV is defined as

$$CV = \left( \frac{\sum_{i=1}^n (X_i - \bar{X})^2}{n} \right)^{1/2} / \frac{\sum_{i=1}^n X_i}{n}$$

Table 6 15

DISPERSION MEASURE OF STATE AND LOCAL EXPENDITURES FOR  
SPECIAL EDUCATION

Type of Handicap	Average Expenditure Per ADA	Standard Deviation	Coefficient of Variation
Mentally retarded, trainable	\$ 4.61	\$ 3.30	71.645
Mentally retarded, educable	14.61	7.78	53.236
Hard of hearing	1.19	1.55	131.030
Deaf	1.69	1.75	103.714
Speech impaired	5.98	7.97	133.367
Visually impaired	1.20	1.07	88.599
Emotionally disturbed	4.51	5.97	132.356
Crippled	2.30	3.38	146.610
Learning disabled	4.87	6.20	127.303
Other health impaired	1.58	2.35	148.822
Total	\$43.83	\$24.43	55.744

expenditures per ADA among the states. The data show that expenditures on the mentally retarded do not vary as much across the states as those for the other disabilities. This can reflect either a larger variation in the percentage served or a larger variation in the expenditures per child served for the other types of handicaps.

### Determinants of State and Local Spending

If one objective of Federal policy is to stimulate state and local spending on special education, it is important to understand the determinants of that spending. Just why state and local districts spend at various levels is a complicated issue. Some simple models of state and local behavior can help clarify the issue.

Per-pupil spending on special education should reasonably be a function of income per capita. The higher the income, the more one would expect to be spent on the education of the handicapped. This is true of regular education,<sup>39</sup> and it is reasonable to believe that it would be the same for special education.

Spending on special education should also be a function of whether such education is mandated. Even without legislation, many local districts would provide such services. Legislation, however, would have an effect on some districts that would not otherwise provide it. Therefore, it is hypothesized that state and local education expenditures would be affected positively by legislation mandating the provision of special education services.

The amount spent on special education may also be a function of population density, although whether high population density should increase or decrease emphasis on special education is not clear. Low population density areas might have fewer handicapped youth per school district because travel times would limit the geographic size and, hence, the population size a school district serves. Since it is

<sup>39</sup> S. M. Barro, *The Impacts of Grants in Aid to State and Local Education Expenditures*, The Rand Corporation, P-4385, 1970, p. 21.

reasonable to expect that economies of scale will make special education relatively less expensive when larger numbers of pupils are involved, the expenditure rate may be inversely related to population density. The low density district may simply not offer special education, since the small size program and high cost could outweigh benefits. However, if the high density district were to offer the program, their spending per capita on special education would obviously exceed that of the low density district. This would imply that special education expenditures were positively related to density. Therefore, population density exerts two conflicting forces on special education expenditures.

Another possible determinant is the method of financing special education within each state. Whether the state reimburses all excess costs, matches local spending, or provides flat grants will make a difference in the behavior of the local district. Unfortunately, it was not possible to get adequate data on this variable to include in this description. It should be gathered, however, for extensions of this research.

The model that has been discussed is assumed to be linear.

$$S = a + bI + cM + dD,$$

where S = special education expenditures per ADA,

I = per capita income,

M = 1 if mandated, 0 if not mandated,<sup>40</sup>

D = population per square mile.

Using 1971 data,<sup>41</sup> the following coefficients of the model were estimated.<sup>42</sup>

$$S = 36.3 + .020I + .003D + 6.56M$$

(5.2)      (3)      (1.6)

$R^2 = .53$

Income has by far the most significant coefficient and is related to large changes in the special education expenditure variable. The model estimates that for every dollar increase in per capita income, two cents goes to special education per ADA. This could mean that Connecticut would spend some \$46 more than Mississippi because of the income effect. Since the mean value of S is \$36, it shows the dramatic relation to special education that incomes may have.

The variable, density, is not statistically significant. It could be that the two conflicting forces, potentially caused by density, just cancel one another out. Using state data, however, is probably too high a level of aggregation to see behavior in individual school districts. The impact of density should be studied more closely with data from school districts.

Mandating legislation was hypothesized to have a positive impact on spending.

<sup>40</sup> States that only provided permission for the local districts to have special education or required a minimum of children greater than one for special education were considered not to have mandated special education. Information on existing legislation was taken from *The Council for Exceptional Children, Digest of State and Federal Laws: Education of Handicapped Children*, Arlington, Va., 1971.

<sup>41</sup> Data on average daily attendance were taken from the *Digest of Educational Statistics*, p. 26. Income data were taken from the *U.S. Statistical Abstract*, p. 121. The income data were for 1969, but because income is a slow moving function, the year lag should not distort the analysis. Data on population density were also obtained from *U.S. Statistical Abstract*, p. 13.

<sup>42</sup> T-ratios are shown in parentheses below each equation.

and, in fact, had a positive statistical relation. The coefficient, however, is only significant at approximately the 15-percent level of confidence.

The preference of states for dividing funds between special and regular education was also subject to investigation. A model similar to the one above was hypothesized where the ratio of special education expenditures to total current expenditures on the total school program was regressed against the variable measuring density, mandated legislation, and per capita income. The estimated model is shown below:

$$S/E = 1.01 + 1.10 M + 0.005 D + 0.017 I \quad R^2 = .30,$$

(1.68)                      (-.32)                      (2.75)

where S/E = Special Education Expenditures/Current Expenditures for Public Elementary and Secondary Schools

Once again, the density variable is not significant in explaining differences in emphasis on special education among the states. Whether the state has mandated legislation, however, is related (10-percent confidence level) to spending preferences.

Again, income is highly correlated with the amount of funds going to special education. The coefficient of the income variable is significant at the 1-percent level of confidence. This means that not only do high income states pay more for special education, but they also give it more emphasis relative to regular education.

We noted previously that percentage of handicapped served was related to the density of the state. Here, however, we have seen that both special education expenditures per ADA and special education expenditures as a percentage of total expenditures are not related to density. This implies that, while the less densely populated states are serving fewer students, they are spending more on each of those served. To verify this, we used the same type of model and showed that expenditures per pupil served are negatively related to density.

The utility of such models is restricted by inconsistencies in the cost data cited earlier. But these exploratory models do indicate some of the major factors relating to special education expenditures. Further analyses with other potentially explanatory variables are needed before we can draw firm policy conclusions.

## STATE AND FEDERAL EXPENDITURES FOR THE EDUCATION OF THE HANDICAPPED

Previous subsections have examined Federal and state and local spending separately. The programs supported by these funds are for the most part not distinct, and Federal funds are intermingled with state and local funds in their operation. To obtain an idea of the scope and composition of the funds going to the handicapped, it is necessary to look at the total contribution each level of government makes.

State and local expenditures by disability were presented in Table 6.9. Most of the Federal funds are not allocated by disability. Table 6.16 presents the state and local expenditures and an estimate of the Federal allocation of funds among handicapping conditions. This estimate was made by assuming that Federal funds that

Table 6.16

## TOTAL SPECIAL EDUCATION EXPENDITURES BY TYPE OF HANDICAP

Type of Handicap	State and Local (\$ million)	Federal (\$ million)	Total (\$ million)	Per Child Served (\$)
Mentally retarded, trainable	260.0	45.5	305.5	2064
Mentally retarded, educable	840.0	75.9	915.9	1217
Hard of hearing	55.0	13.6	68.6	1247
Deaf	91.0	42.5	133.5	4767
Speech impaired	251.0	21.8	272.8	197
Visually impaired	66.0	19.2	85.2	3043
Emotionally disturbed	258.0	35.0	293.0	1472
Crippled	210.0	10.0	220.0	1718
Learning disabled	250.0	32.1	282.1	1227
Other health impaired	84.0	19.2	103.2	1086
<b>Total</b>	<b>2364.0</b>	<b>314.9</b>	<b>2678.9</b>	<b>879</b>

could not be classified directly<sup>43</sup> were distributed in the same proportion as EHA-B funds. The distribution of EHA-B funds closely resembles the distribution of state and local funds among handicapped groups. Since the state and local expenditures play a dominant role in shaping the program, it is not unreasonable that the remaining Federal funds (teacher training, research, Title III, etc.) will be used ultimately in proportion to the size of the state and local program.

Total expenditures on education of handicapped youth were approximately \$2.7 billion. Recall that this is an estimate of the amount budgeted for special education of handicapped students. Some handicapped students also receive services as part of the regular school program.

Table 6.16 also indicates the average cost per handicapped child served, by disability. Education for the aurally or visually unpaired is by far the most expensive.

One Federal Government goal is to serve 100 percent of the handicapped population.<sup>44</sup> Table 6.17 shows an estimate of the increase in the annual special education expenditures necessary to achieve this objective. In this estimate the Federal roles in training and research would be expanded in proportion to the change in the population served. A further assumption was that the average cost of serving children is equal to the marginal cost of expanding service. The number presently unserved in the age 5 to 17 general population was derived previously.

As shown in Table 6.17, an estimated \$2.5 billion per year would have to be added to the special education expenditures to provide elementary and secondary education to 100 percent of the handicapped youth aged 5 to 17 at present service quality levels. Over 48 percent of this increase would go toward educating the emotionally disturbed, who presently consume only 10 percent of the expenditures. An attempt to serve all handicapped children would require a large change in the percentage of funds going to each disability group. A possible implication of this

<sup>43</sup> Federal programs classified directly were Federal Services for the Deaf, American Printing House for the Blind, EHA-B, P.L. 89-311, Deaf Blind Centers, and IAG.

<sup>44</sup> Statement by Duane J. Matthews, U.S. Deputy Commissioner of Education for School Systems, *Hearings*, p. 159.

Table 6.17

**INCREASE IN SPECIAL EDUCATION EXPENDITURES NEEDED TO  
SERVE ALL HANDICAPPED YOUTH**

Type of Handicap	Incremental Number	Incremental Expenditures (\$ million)
Mentally retarded	289,000	393
Hard of hearing	204,000	254
Deaf	11,000	52
Speech impaired	423,000	83
Visually impaired	24,000	73
Emotionally disturbed	835,000	1229
Crippled	(a)	(a)
Learning disabled	287,000	352
Other health impaired	36,000	52
<b>Total</b>	<b>2,109,000</b>	<b>2488</b>

<sup>a</sup>Crippled are included with "other health impaired."

need for a large change from current practice is that the 100 percent service level cannot be reached by just adding money to the total program. Such additions are likely to be allocated among handicaps in much the same way as the current budget because of institutional forces that tend to make budget proportions rigid. To increase funds for a particular disability would require categorical funding or tight regulations—a type of funding and control that presently does not characterize the Federal program.

Four important qualifications must be put on the implications of this information. First, estimates of incidence levels of disabilities and marginal costs are based on data of questionable quality. Second, the appropriate measure of the population size against which to apply the incidence levels is a matter of judgment. Third, some of those handicapped not served by special education are presently in school, and the increase in special education expenditures if they were to be served is partially offset by a reduction in the regular educational services that would no longer be delivered. A more important qualification is that this information does not imply any normative judgment about what the proper allocation of resources among the disabilities should be, or the proper amount of resources needed per child to obtain a quality education.

The cost estimates presented in Table 6.17 attempt to answer the question, "What increase in special education expenditures would be necessary to enroll 100 percent of the handicapped children in programs of today's present quality?" Equity considerations would argue that 100 percent coverage is a proper objective, but it should not be a solitary one. Another consideration is the effectiveness of programs in altering behavior or teaching cognitive skills. If programs for the emotionally disturbed, for example, are not effective in restoring mental health, it would not be good policy to expand them just to increase the equity coverage. Estimates of the marginal benefits of increased expenditures, however, are well outside the scope of this report.

## SURVEY RESPONSES FROM STATE EDUCATION AGENCIES

The Rand survey described in Appendix B included administrators of special education in each state. Primarily because of the excellent help received from HEW's Bureau of Education for the Handicapped, including a personal letter to each survey recipient requesting his cooperation, the response rate was 70 percent. Most of the information was program descriptive and is presented elsewhere in this section or will be used in a subsequent report to support recommendations for program improvement. In general, the cooperation we received from the states on this survey was excellent, however, response quality was limited somewhat by the information available at the state level.

To improve special education programs, it is necessary to understand the problems or obstacles facing those who provide the service. Part of the questionnaire asked administrators to delineate problems they were encountering, but although 70 percent of the states' education agencies responded to the survey, only 14 percent responded to this particular question. Those responses, however, generally agreed with the problem descriptions that we heard in our site visits to five states. Therefore, the problems enumerated below are probably much more widespread than the response rate would indicate.

**Growing Resistance to Providing Funds for Education of the Handicapped.** Funds for special education have grown to a level where they are no longer an insignificant part of the budget. Under the fixed budget constraint that is occurring in more and more states as well as in the Federal Government, increased funds for special education imply a reduced budget for some other programs. Given the politics of the budgetary process, such a growth in expenditures for special education must inevitably lead to resistance.

**Inadequate and Uncertain Funding.** A constant complaint was that there are inadequate funds for special education. In the eyes of program administrators, however, this problem is common to almost all programs. Many feel that the uncertainty of Federal spending levels makes planning very difficult. The timing of the Federal Budget cycle and the school calendar also means that projects have to be designed, approved, and implemented in too short a period for adequate administration of these processes.

**Shortage of Personnel.** Although some states have legislated that all handicapped children be served, state administrators have recognized that there are not enough adequately trained personnel to handle such a task. One state recommended placing more emphasis on the teaching of exceptional children in the curriculum for regular teachers. This would not only aid the instructional process by perhaps letting the handicapped child remain in the normal classroom, but would also increase the teacher's opportunities to correctly identify those in need of special education services.

**Problem in Servicing Low Incidence Populations.** One state mentioned difficulties in servicing low-incidence populations such as the deaf-blind. This problem will vary in magnitude depending on population density. For example, in many small school districts there may not be enough partially sighted children to provide an adequate program at a reasonable cost. In major metropolitan centers, however, finding the critical mass of students to achieve necessary economies of scale would be no problem.

**Lack of Program Coordination.** Five of the major programs are usually handled by three different departments at the state level: Titles I and III, EHA-Band P L 89-313, and Vocational Education are administered separately. Although the three groups are supposed to be coordinated, we noticed that this coordination varied from excellent to practically nonexistent. Several administrators stated that they never had any impact on the decisions of the others—although they signed the project coordination sheet when Federal regulations required it.

**Lack of State Support for Special Education.** Several administrators thought that the local response was heavily influenced by the size of state aid for special education. One state, for example, was paying only 25 percent of the excess cost. This was felt to be an insufficient incentive for many of the poor districts to provide special education.

**No Pre- and Post-School Program.** One state felt that the education system should incorporate both pre- and post-school programs for handicapped children. While some states now allow preschool programs for handicapped children, it has not been a widely adopted concept. For some handicapping conditions, age six is past the optimal time to start the child's educational program. Similarly, it was suggested that schools provide occupational training and guidance for those over 18.

## PREVIOUS RESEARCH AND DATA AVAILABILITY

During this study, several policy questions reappeared in our discussions with persons involved in planning for the education of the handicapped:

- What is to be gained from investing in the education of the handicapped?
- How should benefits be measured?
- How can state and local governments be stimulated to increase the educational services for the handicapped?
- What programs are effective for what types of handicapped?

This section reviews a sampling of existing research and data relating to these questions.

### Research

A dearth of research is available on the cost-effectiveness of programs for educating the handicapped. This is not true of other types of education. The value of general education is the central issue of a rich and growing literature.<sup>45</sup> Vocational

<sup>45</sup> See H. A. Averch et al., *How Effective is Schooling? A Critical Review and Synthesis of Research Findings*, The Rand Corporation, R-056-PCSE-RC, March 1972.



and technical education has been the subject of extensive study.<sup>46</sup> Why, then, has education for the handicapped been neglected?

Our view is that the neglect stems from the difficulty and cost of such studies, coupled with the lack of available data. No adequate measure of output is regularly collected on special education programs. The analyst cannot rely on various types of achievement tests, for example, to be part of the public education record on handicapped children. Also, he must distinguish between differences in program output due to the program itself and the output or effects due to the differences in innate abilities of the children served.

In compensatory education studies, the standard procedure is to design control groups or adjust output results for innate abilities by using standard measures of IQ. In dealing with the handicapped, however, the analyst should adjust for the severity of the handicap as it affects the learning process. But how can he adjust for differences in visual acuity among different groups of youngsters in different programs? The Snellen acuity rating scale is not really an indicator of the severity of the handicap if the student is being taught mathematics, for example.

These limitations imply that the researcher must develop measurement instruments and control groups and collect a great deal of new data. For any large sample, the costs of such research would be very high. Even then, such a study would have to beware of a defect occurring in many of the compensatory education studies, i.e., looking only at short-term output measures such as reading scores. The value of short term measures has been questioned when applied to the regular school population. Those short term measures are perhaps more questionable in special education where one possible primary goal is the long-term adjustment to living in normal society. Because of the lack of output or effectiveness information, most studies have tended to focus on the input side of special education.

The most comprehensive treatment of the level of special education is a study by R. A. Rossmiller, James Hale, and Lloyd Frohreich,<sup>47</sup> which had five objectives:

- 1 To catalog procedures for identifying exceptional children and review existing literature on incidence levels of each category of exceptionality
- 2 To estimate the number of exceptional children based on population and incidence level estimated
- 3 To examine the nature of exceptional children programs which are reputed to be of high quality
- 4 To estimate the cost differentials which are associated with educational programs for the various categories of exceptional children relative to the cost of regular school programs provided for normal children
- 5 To estimate the cost of educational programs for exceptional children provided in private schools and in public facilities not associated with the regular public school system

The first two objectives are met by reviewing literature on incidence rates and population projections. The study does not contain much data on the identification processes that are being used, however. Its main contribution is its analysis of costs.

<sup>46</sup> E. M. Stromdorfer, *Review and Synthesis of Cost Effectiveness Studies of Vocational and Technical Education*, Ohio State University, Columbus, August 1972.

<sup>47</sup> Rossmiller, Hale, and Frohreich.

in a selected sample of school districts and residential schools, which reveals a wide variation in special education expenditures. Cost for an educable mentally retarded, for example, ranged from \$708 to \$2358 per pupil. The study shows that there is not just one program for the educable mentally retarded, but a vast number from which the school administrator must choose. While the volume gives the decisionmaker some idea of the program's price, he has almost no information about the program's output. The question of whether high expenditures do make a difference in outcome never gets answered. This is not meant to be a criticism of the Rossmiller study, since this question was not a focus of the research. It is really a call for more research into the relationship between inputs and output so that more rational resource allocations can be made to special education.

Exotech Corporation is now conducting another examination of programs for educating the handicapped.<sup>44</sup> Part of the study involves a detailed survey of 675 public school districts. The survey asks for information on

- 1 Characteristics of the school district (size, location, etc.)
- 2 Size of handicap population served by disability
- 3 Receipt of Federal revenues
- 4 Description of the special education program
- 5 Types of evaluation being performed in special education
- 6 Effectiveness of EHA-B projects

When the survey is completed, this study should give the best description of special education that exists. If the sample is representative, the study should provide better estimates than we have now of who is being served and who is not. It should also provide an estimate of the nature and extent of effectiveness analysis being performed at the local level.

Another type of study describes problems encountered in special education, and then draws on "expert opinion" for solutions. An example is a study by H. D. Babbidge, Jr. et al., *Education of the Deaf, a Report to the Secretary of Health, Education, and Welfare by his Advisory Committee on the Education of the Deaf*, U.S. Department of Health, Education and Welfare. This 8-year-old study presents an excellent summary of the problems encountered in educating the deaf. It also is prototypical of the best of other committee reports on selected disabilities in that it contains a great deal of existing research and expert opinion in one volume. The report's listing of the major areas where improvement is needed is similar to those of today, calling for early identification and treatment of the deaf as well as for more research into finding better methods for teaching the deaf. There is no analytical treatment of what the costs and benefits of early identification and treatment would be, however. Since education was felt to be the primary responsibility of the states, the report does not recommend a large Federal role in the education of the deaf. It suggests the Federal role should be the following:

- 1 To provide incentives for the state to plan special education services more effectively
- 2 To sponsor post-secondary demonstration programs that attempt to integrate

<sup>44</sup> This study is being sponsored by the Office of Planning, Budgeting, and Evaluation of the U.S. Office of Education and has not been published as of this date.

- the deaf into the normal college curriculum
- 3 To develop a residential technical school for the deaf
  - 4 To establish a National Advisory Committee on the Education of the Deaf in order to better coordinate the programs of the Federal Government
  - 5 To increase emphasis on research for educating the deaf

Many states also conduct their own investigations of what services are being provided to handicapped children. Perhaps the most extensive is the recently completed Fleischman Report for New York State.<sup>49</sup> The mandate of this study was to study all facets of public education in the State of New York and not just special education. One chapter of the report discusses the number of children receiving services, problems in diagnosing handicapped children, isolating handicapped children in special schools and classes, financing the education of handicapped children, and training teachers for the handicapped. The report recommends a regionalization of special education, increased effort in identifying handicapping conditions, and increased incentives for the local district to provide special education services. The recommendations stem mainly from expert opinion. There is no data-based argument, for example, of what the impact on local efforts would be under different state-aid formulas for special education. In a field where data are so sparse, however, the report could hardly have been done otherwise. A review of the data deficiencies, to which we now turn, will make evident the constraint on planning imposed by the lack of data.

## Data

One of our survey findings was that if the Federal Government did not require certain information for reporting purposes, it was highly likely that these data would not be available in state agencies. Therefore, much of what the states can provide is already in Federal reports.

The *Description of Projected Activities for the Education of Handicapped Children* report submitted by each state to the U.S. Bureau of Education for the Handicapped contains the most complete information available on the expenditures and population served. The reliability of these data, however, is questionable, and the FY 1974 report form requires considerably less data. School districts do not generally account for special education expenditures separately. State administrators who fill out these particular reports, then, must estimate the size of the local contribution to special education. The methodology behind such estimates is not reported. One state administrator said the estimate was based on what he thought the total cost of the program would be minus the state contribution. While this is a reasonable approach, it leads to less than precise estimates of expenditures. There is uncertainty about the number served also. Some states do not finance special education on the number of children but rather on the number of classes offered. The number of children in a class can vary quite widely (e.g., 5 to 16 in one state). One administrator used the maximum class size to estimate the number being served. This would, of course, lead to an overestimate. Some states, it appeared, exclude their residential schools in estimating state and local expenditures. This is more likely to happen

<sup>49</sup> M. Fleischmann, *Report of the New York State Commission on the Quality, Cost and Financing of Elementary and Secondary Education*, Albany, 1972.

when the residential schools are not run by the Department of Education but by a separate state organization.

Individual projects under EHA-B and P L 89-313<sup>50</sup> are summarized to yield some very detailed information. Project expenditures by resource category (administration, instruction, etc.) are available on both programs. The number of children served and the expenditures by type of handicap are also provided.

Title III reporting forms also require information on the resources flowing to the handicapped. The form asks for information on expenditures and the number served by handicap. The quality of the reporting under Title III can only be described as abysmal. In many instances, the state reports available to the U.S. Office of Education were not complete or there were such obvious discrepancies in the figures reported in different places in the same report that they make the reports of very questionable value as valid indicators of how Title III funds are being spent on the handicapped.

State reports to the Federal Government on the Vocational Education Program present the numbers of handicapped participating and expenditures on the handicapped. These figures are not broken down by handicaps, however. Enrollment estimates are broken down by the type of vocational education (health, agriculture, etc.).<sup>51</sup> Again, however, it is difficult to see how these figures can do more than give some idea of the size of the Federal commitment to vocational education of the handicapped. If the planner had to decide what type of vocational education to supply to which types of handicapped children, the data in their present form would not be of much use.

As indicated throughout this section, cost data are not entirely reliable. An effort should be made to standardize the assumptions that are made in reporting costs, and to enforce the requirements that cost be reported. Even if the costs reported currently were accurate, however, they would represent average costs and not necessarily the incremental costs needed for planning. In the current debate over proposed Federal legislation, a recurring question is "What is the excess cost of educating a handicapped child?" These data are generally not available from school districts because they account for cost by resource category (teacher, materials, etc.) rather than by program (reading, handicapped children, etc.). One method to overcome this dilemma is the development of generalized cost models<sup>52</sup> that assist in the design and costing of special education programs. Such models could be used to simulate existing programs such as those reported in the Rossmiller study.<sup>53</sup> Exercise of the model could then reveal what part of the cost difference among programs is due to differences in resource consumption levels and what is due to differences in price levels. Also, a panel of experts could design a "good" special education program in terms of the level and composition of resources employed for each type of disability, and the model would be able to estimate the excess cost under the assumptions made by experts. This seems like a more reasonable approach to the problem of estimating excess cost than adopting the alternative of using median or average costs.

<sup>50</sup> U.S. Bureau of Education for the Handicapped, *Aid to the States Branch Information System, FY 1970 - National Report* (Washington, D.C., 1971).

<sup>51</sup> Bureau of Adult Vocational and Technical Education, Department of Health, Education and Welfare, *Vocational and Technical Education, Selected Statistical Tables, FY 1971* (Washington, D.C., 1972).

<sup>52</sup> See L. A. Dougherty et al., *A Program Budgeting Cost Model for School District Planning* (The Rand Corporation, P-1973, January 1973), for an example of the design and use of such models.

<sup>53</sup> Rossmiller, Hale, and Frohreich.

Mr. BRADEMAS. Although we might take some justifiable pride in the increased Federal involvement over the last decade, the Chair would be remiss if he did not also point out that there still remains a great deal of work to be done.

Consider, for example, that there are today approximately 7 million preschool and school age handicapped children, including the emotionally disturbed and physically handicapped. And yet approximately 60 percent of these children are not receiving the special educational services needed to develop their full potential.

And at the same time, the courts--and I refer particularly to the courts of Pennsylvania and Washington, D.C.--have decided that these children have a constitutional right to appropriate educational services.

I should point out, as well, that over 40 cases have been filed or completed in 26 States with respect to the rights of the handicapped to public educational services.

So we are holding these hearings this week at a time of great promise that the constitutional rights to education will be realized for all young children suffering from mental retardation, hearing, speech and sight damage, emotional disturbances and other physical disabilities.

And the bill we are today considering will insure that the Federal Government will be able to assist the States in meeting this new obligation.

Among our guests this morning are Mark and Mike Kemp, who are the poster twins for the National Association of Retarded Citizens. Mark and Mike are here with their parents, Mr. and Mrs. James A. Kemp, and with their brother, Scott.

We are privileged also to have with us today several distinguished public servants. Our witnesses this morning are: the Honorable Francis W. Sargent, Governor of the State of Massachusetts; the Honorable Ogden R. R. J. Member of Congress from the State of New York; the Honorable Ewald B. Nyquist, commissioner of the New York State Department of Education; and Dr. Daniel Ringelheim, director of special education of the New Jersey Department of Education.

Governor Sargent, we are delighted to have you with us. Won't you please proceed, sir?

**STATEMENT OF HON. FRANCIS W. SARGENT, GOVERNOR, STATE OF MASSACHUSETTS, ACCOMPANIED BY DR. DAVID LIEBERMAN**

Governor SARGENT. Mr. Chairman, I am very pleased and honored to have this opportunity to appear before you and the members of your committee on a matter which I believe is of tremendous importance. I come here today to endorse and support and work with you for the passage of H.R. 70.

The timing and spirit of this legislation reflects my own State's effort to meet the special needs of handicapped children. In Massachusetts we are finally beginning to realize the extent to which handicapped and retarded children have been neglected. It will not be easy to end this legacy of neglect. But the passage of this legislation will truly help.

Mr. Chairman, in Massachusetts today there are approximately 150,000 children between 3 and 21 who have identified "special needs." These are the children we are trying to help.

Although the great majority of these children are enrolled in public schools, only some receive special education. One child may be getting an hour a week of special therapy, a second may receive intensive training in reading skills, but still a third may sit in class undetected and unaided.

The truth is that up to 50,000 children are in classrooms across our State, failing to develop and failing to learn, simply because they have never been identified—they have not been provided with special services.

The waste does not end here. Approximately 3,000 children reside in large impersonal State institutions, stagnating for lack of care. And beyond these, thousands more are simply waiting at home, untouched by any social or educational service.

Two years ago, Mr. Chairman, Massachusetts declared that it time for this policy of neglect to end. With the enactment of landmark legislation, known in Massachusetts as chapter 766, Massachusetts embarked upon an ambitious effort to bring special educational services to all those children: to the thousands in public schools, to the thousands in State institutions, to the thousands in their homes.

Beginning this September, Massachusetts will formally begin this new effort. We will change our way of dealing with handicapped children in two important respects:

First, the responsibility for meeting the needs of handicapped children passes entirely to the local communities. The State will reimburse but the communities must identify and provide a program of assistance for every special need child.

Second, children with special needs are to be educated in their own communities as much as possible. No longer will we send our children far from home for special residential care, when the same care can be provided near their own homes.

In truth, Mr. Chairman, chapter 766 closely resembles the bill that you are considering today.

As with H.R. 70, it stresses the importance of an educational program tailored to the needs of each child. It requires the screening of all children from 3 to 21, followed by the complete evaluation of any suspected of having special needs. And it continues—and I think this is important—the involvement of parents and community groups through regional and statewide advisory boards.

Mr. Chairman, chapter 766 is a new undertaking for Massachusetts. We have never before tried to provide such comprehensive service to such a large segment of our society. The point is that Massachusetts will be hard pressed to meet its full obligation without increased Federal assistance.

Already our commitment to current services is enormous. Every year we spend more than \$100 million on special education at the State and local levels. More than \$40 million comes from the local communities through their property taxes. Another \$40 million is reimbursed by the State. And State taxes pay for still another \$25 million for the special education of students in private schools in and also out of our State.

So the added cost of chapter 766 will not be easy to bear. That is why I have come before this committee. The legislation you have before you can spell the difference between success and failure in Massachusetts and, Mr. Chairman, in any other State with such a program.

Some may say that we should not make this effort. I do not agree. The State gains by aiding children with special needs. By helping our children now, we add to the number who can contribute to society in the years to come and we reduce the number who will remain in permanent need of State assistance.

But, Mr. Chairman, the real issue is that there are thousands of young people in Massachusetts who now need our help. In the Nation, Mr. Chairman, there are millions. Right now they simply exist.

These children, with all their potential, are the reason for chapter 766. They are why Massachusetts has accepted such a heavy burden.

Mr. Chairman, I believe the Congress must also act. Only you can provide the major financial assistance that will guarantee the success of our efforts. Only you can assure that the years of neglect will finally come to an end.

I am very pleased to have this opportunity to appear before your committee in behalf of this bill.

Mr. BRADENAS. Thank you very much, Mr. Sargent.

What you are doing in Massachusetts I would say is very encouraging. My point of view as one who has introduced this measure, is that it is always encouraging to see State legislators taking seriously their responsibilities with respect to the handicapped.

You have referred to chapter 766. Is that what is known as the Parker-Daily Act?

Governor SARGENT. This is a bill introduced by members of the house together, not just by the party representation, but we worked together on the legislation.

Mr. BRADENAS. Will you give us a judgment or information on how much of the State's money in your chapter 766 will go to educating handicapped children in Massachusetts this year? Give us some indication of how that amount of money compares with money spent in previous years, so we will get some impact of the passage of this legislation.

Governor SARGENT. Well, in the first place, I should say we have never done enough, in my view, in Massachusetts or probably in any State of the Nation. We have been providing some funds, but not a sufficient amount.

This year we are calling on the cities and the towns to pick up the major burden. We are providing initially \$9 million seed money to help them get started. I am going to have to turn, frankly, to David Lieberman. It is my understanding \$100 million has been appropriated from the State to this particular area.

What we are now trying to do is make a major effort to handle the child's needs.

Mr. BRADENAS. Mr. Lieberman.

Dr. LIEBERMAN. In addition to the \$9 million, what we call "up front money," in the Government's budget, there is an additional \$10 million in our State's schools for the retarded, in our mental hospitals,



to raise the level of educational programing for the children between the ages of 3 and 21 in the institutions.

In addition to that, estimates run as high as \$100 million that it will cost all the cities and towns above and beyond what we are now spending for special education programs in the State.

Mr. BRADEMAs. We turn to another question. Section 716 of H.R. 70—and here I interrupt myself to say that although I introduced this bill, I would certainly hope for any suggestions as to improvements—requires that States disburse the Federal funds provided by the bill to supplement but not supplant State and local funds. That is to say, the States must maintain their current efforts. Now in Massachusetts it is clear that you take seriously your responsibilities for educating handicapped children. I would therefore put to you the following question: Will requirements such as the one I just mentioned have the effect of rewarding States that have been more backward, and punishing those that have taken the lead?

Governor SARGENT. Naturally, any assistance we can get from the Federal Government is important. It is those new moneys that we need to operate effectively. I think the States have a major obligation, as do the major communities.

As I understand the provisions of your bill, you are saying that we should maintain the effort. I would tend to agree with that and I think that should be encouragement for the States to start moving in an area that has been neglected for so long.

Mr. BRADEMAs. I would just put one other question to you before yielding to my colleagues. I understand that under your chapter 766 there will be regional advisory councils within the State charged with the monitoring of programs funded under the act. Will you give us a comment on how you contemplate these councils operating? Are, for example, parents involved?

Governor SARGENT. We feel this is a very important feature. I think we have learned in government in Massachusetts and really across America that when government tries to go it alone and does not use the advice or assistance of people directly involved, I think they make many errors.

We are trying more and more to have citizen criticism, advice, and guidance. I think any legislation, whether it be on the State or Federal level, should be for major participation on the part of affected parents and concerned citizens, and I think the success of the program would be increased tremendously. We feel this would be very important.

Mr. BRADEMAs. I will yield to the ranking minority member, Mr. Quee, whom we are pleased to have with us today.

Mr. QUEE. Thank you, Mr. Chairman and Governor.

Massachusetts spends more money than the Federal Government. Why are you asking the Federal Government to assist, rather than just paying the bill yourself?

Governor SARGENT. We strongly feel we are going to move forward anyway. We recognize we are going to have a very difficult time, however, of providing the full commitment called for by the State, but more particularly to the States and towns. We think the direction the Federal Government should be taking is an obligation on the



part of America to help handicapped children, but we badly need assistance.

I don't think this will in any way discourage the different levels of the State, to have Federal assistance. If we don't get the Federal assistance, it will be very difficult to go ahead, but we will, anyway.

Mr. QUIN. Massachusetts has moved ahead and pays more money. We would not permit the Federal money to supplant State and local funds. Do you still feel it is worthwhile to move the Federal legislation?

Governor SARGENT. I feel the encouragement of Federal funding will get other States moving, but it is going to be very difficult to do it without additional Federal assistance.

Mr. QUIN. In the State of Massachusetts you spend \$2,492 to educate an educable mentally retarded child while in the State of Minnesota we are spending \$1,681. Since you are advocating that the Federal Government pay a great percentage of the cost, do you think that the Federal Government should concern itself over the great cost variation within each disability as well as the vast discrepancy of expenditures which vary from State to State for the same category of disability?

Governor SARGENT. I don't know what the precise formula would be, and I suppose every State would handle its problems differently and have a different price tag. At this time it is my understanding we are paying thousands of dollars a year to take care of a child with special needs outside of our State as well as inside the State. This might vary from State to State. It seems to me there should be a formula established that would still enable the States to play an additional role, but we still need the additional assistance from the Federal Government.

Mr. QUIN. If we look at the difference between Minnesota and Massachusetts costs, Minnesota is spending more per orthopedically handicapped child than Massachusetts. So it is a matter of the difference in the different parts of the country as to cost.

Governor SARGENT. I don't know exactly how to answer that. Maybe I am not as well informed as I should be. I think the main thing should be to encourage the States to do more than they would ordinarily.

Perhaps Dr. Lieberman would like to comment on that.

Dr. LIEBERMAN. One of the ways we handled it calls for an average and then there is a provision to pay 110 percent above the average. It varies community to community like it does from State to State. I am not sure that would be fair nationally. I don't know. I think the staff probably knows more about how those figures look State to State. But we did try to adjust for it by paying over 110 percent at some percentage, and it will probably work out.

Mr. QUIN. Massachusetts isn't listed in the information I have here.

Dr. LIEBERMAN. We put it at around 50,000 but that at best is a guesstimate. I don't think we have hard figures. Every day we are finding severely handicapped kids at home, not being served.

Governor SARGENT. I would say that applies across the country.

Mr. QUIN. Do you estimate it may be higher than 50,000 handicapped served in Massachusetts?

Dr. LIEBERMAN. It depends on where you are going to draw the line on handicapped. If you are talking about emotionally disturbed chil-

dren, a whole range of handicapped children, then that figure varies, obviously. I think that will have a better meaning after the first of the year; every child is evaluated by a competent evaluation system in every school, and once we begin to examine those evaluations, I think we will have a better sense of this.

Mr. QUIE. What is the population of Massachusetts?

Governor SARGENT. Just under 6 million.

Mr. QUIE. Do the figures indicating the number served in Massachusetts and Minnesota indicate you have a lesser percentage in your State or do they indicate you are serving a greater percentage?

Dr. LIEBERMAN. I can't believe we have a lesser percentage. Again, I would like to know what the definitions of handicap are that drew you to the figures.

Mr. QUIE. You may want to look the tables over before you leave. They provide information on the various handicaps and the information is supplied by the State.

Thank you, Mr. Chairman.

Mr. BRADENAS. Mr. Lehman of Florida.

Mr. LEHMAN. I have just a couple of questions I would like to ask you.

One, I was with Chairman Brademas of this committee in Vienna this summer and saw what the program was for the education of handicapped in Austria. One thing they have been able to do is to arrange the transition of the education of the handicapped to the employment of the handicapped.

One school we went to had better than 95 percent employment achievement from people who came out of that school. By a kind of a transition they are phasing in the mentally handicapped. They were able to introduce people into industry and commerce by using the equivalent machinery and techniques in the schools so the transition wouldn't be traumatic from the standpoint of doing the kind of job they were doing in the training school to actual work experience in industry and business.

Is there anything in your program in the way of transitional process to move the employables into gainful employment?

Governor SARGENT. We think of ourselves in America as being socially advanced. In terms of taking care of people with special needs, really, we have not done as much as we should. Many nations have done more.

My wife had an opportunity to go to Sweden and she had an opportunity to participate with the families. In JOBS we are trying to get industry, on a volunteer basis, to encourage and employ handicapped persons. So far it is pretty much on a voluntary basis and I think we should do much more in that area.

Dr. LIEBERMAN. We have a number of workshops that try to provide transition for people to make a transition from an institution to gainful employment. I think we have a long way to go.

Related to that, as we move through residencies and try to normalize the conditions of the individuals involved, we have an active program; particularly this last year we have been trying to get out of institutions retarded adults who don't belong there and trying to move them into jobs near their residence and trying to bring about as close to normal a life as possible. It is difficult.

Mr. LEHMAN. It can be done.

Dr. LIEBERMAN. It can be done; it is not an easy task. You can make it happen.

Mr. LEHMAN. We were once told civilization is judged by the way the handicapped are treated. I just wonder what portion of the funds for the education of the handicapped will be earmarked for the counseling of the handicapped child's parents and the education of the peer group in regard to dealing with the handicapped.

A serious thing I have run into is the liability of the parents of the handicapped to let their children participate in these programs. They would rather see them fail their history course as a so-called "normal" child, or to be anything other than what they are.

I think some of this money should be earmarked for parent counseling.

Second, I think some of this money should be used for the education of the peer groups in those schools where the handicapped children are enrolled, because children can be cruel.

So I think some of this money should be delegated to educating people in the schools where handicapped kids are being involved. If you do not, it will make it much more difficult for these kids.

Governor SARGENT. I think it is a very interesting suggestion. I think many parents would like to know better how to understand the ways in which they can help their kids become a part of the community.

Also, we have a feeling that when kids with certain disabilities are able to associate with kids who don't have them, as for instance coequals in schools, in classes, not only were kids with disabilities helped by this, but those who do not have disabilities, if they understand the importance of it, they can profit by it. But I agree there is a problem getting it going.

Mr. LEHMAN. The best education for juvenile delinquents I have ever seen is in a junior high school in our district where the "bad" kids were assigned to help the handicapped kids and were given credit for helping, academic credit for helping and working with the afflicted children in that school.

I think we can do a lot about our delinquency problem by using our heads in this and making it a two-way street.

Mr. BRADENAS. Mr. Hansen of Idaho.

Mr. HANSEN. I would like to join in welcoming you to this meeting.

As I understand your statement in response to questions, we are in close agreement on what we are attempting to achieve and I confess I have no more precise knowledge of the details of a formula than you have suggested. I would voice the very strong hope that in the formula that we ultimately develop, this is what I understand you are saying, that we maintain very strong incentives for State participation so this will not become a program increasingly dependent upon the Federal Government for support.

In trying to devise that formula, perhaps you can comment, give us some suggestion or guidance as to how we maintain, or perhaps should we maintain as a matter of policy, a system which responds to the very expensive training that some of the more severely handicapped will require.

The temptation, it seems to me, is to do the easiest cases first where we can show the greatest results, and in the formula for allocation it may very well be on a "per pupil" basis regardless of the severity of the handicap.

Can you suggest any assurance we might build into a formula or program to make certain that those with the most severe handicaps requiring the greatest attention at greater cost will not be overlooked.

Governor SARGENT. I don't know precisely myself how that can be handled, but I can easily see the easier route would be liable to be followed if there was no incentive. We should be placing particular emphasis on them.

Dr. LIEBERMAN. I think you are in an important area and one we have to do a lot of homework on. We do not have a lot of experience in this area. When you compare the relative costs you are not talking about an average but you are talking about an average for a clinical nursery or a day treatment program. In other words, when you begin to talk about averages and how you are going to equalize this thing across the country, this is obviously difficult.

Even though I prefer to just talk about a general category, philosophically, I think we have to recognize that a child in a residential treatment program costs on the average as much as \$8,000 a year; some go as high as \$12,000 a year; plus there are some day treatment programs that might run \$4,000 a year. A clinical nursery might run \$3,500 a year. So you have to talk about average costs for a certain kind of program.

Mr. HANSEN. Thank you very much. I commend you for the leadership you have shown in the State of Massachusetts and give you every kind of encouragement to continue with that program.

Mr. BRADEN. We are very grateful to you for coming to testify today, and I want to say I am very grateful for your testimony.

Governor SARGENT. Thank you very much. I wish we had the answers to all the questions. Needless to say, we don't have.

Mr. BRADEN. We will go ahead now to hear the testimony of a distinguished former member of the Select Subcommittee on Education, who has had a long interest in the subject of handicapped children. He is one of the ablest Members of the House of Representatives and I understand he is seeking, shall I say, higher office. We are very pleased to have him here this morning. He is a personal friend of the Chair and an able spokesman on the issue before this committee.

Mr. Reid, we are glad to have you with us this morning.

#### **STATEMENT OF HON. OGDEN R. REID, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK**

Mr. REID. I would only state very briefly, Mr. Chairman, the need for this legislation, since handicapped children so seriously need assistance. Of the children of school age who are handicapped in New York, about 250,000 are being served with special educational facilities. Over 200,000, however, are not being served and instead are struggling through regular school classrooms, trying without success and with the expected loss in confidence that is inevitable to keep up with their peers.

I might also mention, Mr. Chairman, parenthetically, that under the new title I of ESEA, it is estimated that New York State will lose \$3 or \$4 million of last year's allocation for the handicapped. New York State is presently getting about \$10 million under title I for the handicapped, but is expected to be cut by \$3 or \$4 million. This adds some additional reason for support of H.R. 70.

The Council for Exceptional Children here in Washington has estimated that the cost runs an additional \$800 per year, on an average, for the educational services handicapped children require. Surely, this is no pittance. In New York State, however, New York State officials estimate the cost to be \$1,600 a year to educate the normal child and anywhere from \$3,000 to \$5,000, Mr. Chairman, a year to educate one who is handicapped. It costs at least twice as much to educate a handicapped child, sometimes five times as much.

That is why the States urgently need help. A bill like H.R. 70 would do much to relieve the States of the burden they have tried to carry.

Recent court decisions have upheld the right of handicapped children to an education. In the case of *Peter Miles et al. v. the D.C. School System*, the school district was required to educate every child. In addition, in Pennsylvania the courts have ruled that education is a constitutional right which must be extended to handicapped children.

Aside from these court decisions, however, I think it is the only right thing to do and that indeed it would be unconscionable, in fact, to continue to ignore the needs and hopes of those thousands of children who can't see or hear or can't move their limbs or, in some cases, can't feed themselves like normal children.

We must commit ourselves to the notion that no child is incapable of being educated and indeed it is our responsibility to help them all we can, to give them a chance to cope with what has already proved to be an unfair world.

I thank you, Mr. Chairman, and your colleagues. I hope the committee in its wisdom will work promptly and favorably on the bill, and I would be happy to answer any questions.

Then I would like to briefly introduce the commissioner of education of the State of New York.

Mr. BRADEMAS. You have been in the House of Representatives for a number of years. I have noticed in my own State of Indiana a sense of concern on the part of parents of handicapped children as to the possibility of their being effective in the State legislatures and Congress and at the local level for generating more support for handicapped children's services.

I wonder if you could give us any comment on what you have observed in New York State with respect to the attitudes of the public, both the sector represented by the parents of handicapped children and the parents of nonhandicapped children.

Mr. REID. Let me comment a little bit. There are really three areas here as regards the State of New York.

The first is the severely mentally retarded, which is one of the definitions of "handicapped." We have a certain number of institutions, among which is included Willowbrook. Here in these institutions something like 50,000 of the State's severely handicapped children are being treated. Something like 30,000 or 40,000 are not receiving treatment in these facilities. I sometimes think they are better off.

I recently visited Willowbrook, which has decreased in population from 5,500 to 3,800. It was saddened once again to see the standards are still below minimal public health standards. While I visited there 2 years ago with Dr. Bert Brown of NIMH, it was clear the standards were way below public health standards.

There was a public outcry that was considerable. There was action on television. But interestingly enough, the previous Governor of New York failed to take action even in spite of the very strong public outcry until the Federal court ordered him to do so.

I might point out that neither he nor the present Governor has visited Willowbrook. If he visited the spastic ward there, for instance, he would observe children lying on wooden cots with legs no bigger than cigarettes, like that [indicating], with the ability to follow you only with their eyes. They might be partially ambulatory, according to Dr. Brown, had they been given proper care.

One would be interested in how many doctors and psychiatrists are in the institution. Today there is an inadequate staff.

The second area of concern is some of the handicapped children not in institutions who may have modest impairments of speech or visual impairments, who nonetheless are being taken care of in some private or preparatory schools. The State at the present time does not, as far as I know, fund any of these institutions or schools where the children are under 5. Here, the children above 5. I hope the State Legislature of New York will do something as to children above age 5.

To sum this up, I think there has been cruel insensitivity to the handicapped in New York. The figures I mentioned earlier at least 200,000 not receiving any services at all, those who are being treated are at facilities which are below public standards of health—it is clear the public wants this changed. I think they are outraged about it.

Mr. BRADENAS. Thank you very much, Mr. Reid. It is quite obvious from that response you are both deeply concerned about and knowledgeable of the problem.

Mr. Hansen.

Mr. HANSEN. Thank you, Mr. Chairman.

I have no questions, but I wouldn't want to miss the opportunity to say how good it is to have you back. We miss you very much. I would acknowledge my own indebtedness to you on this subject during the time I had the privilege to serve with you. I would also pay tribute to the leadership you furnished to this committee and in this Congress, so many landmark achievements, which I hope will be true also of the legislation before us.

Mr. REID. I would like to respond. I think Orval Hansen has added greatly to this committee. It has always been a privilege to work with him and I know about his sensitivity and insight on many of the problems fundamental to the handicapped.

As to the leadership of the chairman as he heads this subcommittee, he is doing work creative and important to the future of our country, which is so essential for every child; that is, to have the education basic to maximizing the future.

Mr. BRADENAS. I would like to turn the microphone over to Mr. Lehman.

Mr. LEHMAN. You should let me talk because I have all your constituents now in my district. At any meeting I go to now in my district I am asked, "How is Congressman Reid?"

I had lunch with Dave Astry. He is a sponsor of cerebral palsy programs. He said to be sure to give you his best.

Mr. REID. Thank you very much. I am delighted you are taking such excellent care of our constituents.

Mr. LEHMAN. Good to have you here.

Mr. BRADENAS. Mr. Reid, thank you very much. We will yield to you to present our next witness.

Mr. REID. Finally, I would like to take the liberty of introducing the next witness, a colleague of mine from New York who has spent a good deal of time specializing in the area of education. He worked closely for a number of years with Jim Allen, who I wish was with us today.

He is providing leadership of a significant character to education in the State of New York. He has frequently taken stands which are correct in my judgment, not always popular, but he is a man of both compassion and convictions. He has taken grounds where the legislature was moving back into another century, and he has seen the need and at no time has he been afraid to speak out on the critical issues facing education.

I am delighted he can be here to testify in support of this legislation and other matters which might be pertinent.

Mr. BRADENAS. Thank you very much.

Mr. NYQUIST, go right ahead, sir.

**STATEMENT OF HON. EWALD B. NYQUIST, COMMISSIONER, NEW YORK STATE DEPARTMENT OF EDUCATION, AND PRESIDENT, UNIVERSITY OF THE STATE OF NEW YORK**

Mr. NYQUIST. Mr. Chairman and members of the subcommittee, I am Ewald B. Nyquist, president of the University of the State of New York and commissioner of education. I appreciate the opportunity to testify today regarding the provisions of H.R. 70, the Education for Handicapped Children Act.

As one who is concerned with State administration of educational services for handicapped children, I am pleased to give basic support for the provisions of H.R. 70.

The delivery of educational services to handicapped children through local educational agencies, private organizations, State-supported and State-operated schools, has been a commitment of New York State for many years. Despite our best efforts, we still have not been able to provide a satisfactory program for each handicapped child in New York State.

Of the 7 million handicapped children in the United States, it is a conservative estimate that 459,000 live in New York State. This figure represents 10 percent of the school-age population. The Fleischmann Commission, which recently completed a 3-year study of the quality, cost and financing of elementary and secondary education in New York State, concluded that at least 200,000 school-age children with identifiable handicaps in our State are not presently receiving any special educational services.



It seems clear to me that our collective purpose is to find appropriate and equitable ways to combine Federal, State and local resources to assure the provision of educational services to all handicapped youngsters. It is unrealistic to assume that State and local governments alone can carry the heavy financial burden which will be required to fulfill our common goal.

H.R. 70 mandates the unification of all educational programs under the auspices of State education departments. This proposed consolidation program will provide for greater efficiency and effectiveness in administrative functions. I support this provision strongly.

I support the provisions of H.R. 70 which deal with accountability procedures and appropriate mechanisms for the placement and evaluation of handicapped children.

I commend the recommendation to create State advisory committees, with one caveat. Since the State educational agencies have the primary responsibility to administer educational services to handicapped children, it is appropriate that the same State agency should appoint the advisory committee and recommend committee functions which would then be reportable to the State commissioner, rather than the State's chief executive.

I am pleased to note that H.R. 70 requires States to reevaluate children who are institutionalized and encourages the placement of such children in home settings whenever appropriate. It is a hope of mine and the New York State Board of Regents that we might move more expeditiously toward mainstreaming handicapped children into the regular classrooms whenever it is possible.

The New York State Board of Regents in their position paper entitled "The Education of Children with Handicapping Conditions" state: "The quality of many publicly operated or supported educational programs is related to the degree to which children with handicapping conditions are grouped or otherwise combined effectively with other children in the mainstream of our schools and society."

I applaud the fact that the authors of this legislation seek not only to insure responsible fiscal support for handicapped children, but also attempt to safeguard the rights of handicapped children and their parents. This is accomplished with a need to communicate prior notice when an education agency proposes a change in the educational status of a child and by authorizing due process hearings which may include the examination of all relevant records and the rights of parents to obtain an independent evaluation of the child.

Along these lines, the committee may wish to consider the development of a procedure which protects a handicapped child whose parent is absent or unknown.

One point in the bill to which I take exception is the requirement that the State provide a listing of children and the placement provided to each child. I believe that this pupil accountability, both for proper administration and the maintenance of confidentiality, should be kept at the local public school district level and not at the State level. I recommend this for your serious consideration in amending the bill.

In my opinion, the Federal general aid plan containing a formula such as embodied in H.R. 70 will assist the States to meet the challenge, while at the same time giving each State the ability to tailor its program to fit individual needs.



I accept the concept of a \$600 per pupil aid amount to be used as a floor in the computation of the grant amount and encourage that this provision be retrained as the bill is considered.

I further accept the excess cost concept as defined within the bill and recommend that it also be retained. I assume that the language as presently included within section 5(a)(2)(B) indicating that "75 per centum be multiplied by the total number of handicapped children in such State" is not intended to limit in any way the number of children who can be served under this act, but that instead such language means "75 per centum times such excess cost times the number of handicapped children in such State \* \* \*".

If such an assumption is not correct, I recommend that the language be amended to provide for the latter meaning.

Because of the unusual expenses incurred in transporting handicapped children, it would be desirable to specifically include transportation expenses in the definition of the average per pupil expenditure of handicapped children, thereby making transportation an approved cost for reimbursement purposes.

In addition, each State should be given assurance that it will not receive less moneys than it now received pursuant to any Federal assistance for handicapped children. H.R. 70 is presently devoid of this save-harmless clause.

H.R. 70 defines "the average per pupil expenditures for handicapped children" as being derived from expenditures during the second fiscal year preceding. I believe this should be changed to have expenditures used in the computation to be those of the fiscal year preceding.

I believe the bill should be amended to include the provisions of the Tydings amendment. That is, if funds appropriated to the State or local education agencies cannot be expended in the year of appropriation, they will be available for expenditure by both the State and local education agencies in the following year.

The cost of educating handicapped children far exceeds the cost of educating nonhandicapped children. In New York State, the cost ranges anywhere from two to five times the cost for educating "normal" children. The average cost for the education of a "normal" child in New York State last year was \$1,300. The five large city school districts of New York State report that the operating costs for a physically and mentally handicapped child are over \$4,000. A severely retarded or emotionally disturbed child costs the cities almost \$4,900 to educate. A deaf child being educated in a State-supported school for the deaf will require \$5,500 of State support.

We have 46 regional educational agencies called "Boards of Cooperative Educational Services" (BOCES) providing comprehensive services to handicapped children from the more rural areas of the State. Estimated average costs in these BOCES for a handicapped child is \$3,300. Depending upon the nature of the services and the degree of handicaps of the children, the range is from \$1,800 to \$5,400.

Costs for the treatment and care of children confined to institutional custodial settings is over \$10,000 per child per year.

New York State expended in 1969-70 approximately \$420 million to provide educational services to over 245,000 handicapped children in local districts, BOCES, State institutions and special schools. Our expenditures in subsequent years have increased so that in BOCES

alone during the current school year total estimated expenditures will be over \$70.1 million. This figure compares to \$40.65 million in 1969-70.

Despite the millions of dollars that New York State spends annually on the education of handicapped children, we still are unable to meet the increasing demands that are being placed on the educational system by the parents of handicapped children. Their demands are no longer demands that deal with providing an opportunity for the education of handicapped children, but now parents are concerned with the quality of education for handicapped children.

The States cannot meet these requirements by themselves. We do need direct Federal support and the Federal support should be on an excess-cost basis.

I would like to interrupt myself at this point. Just recently, as Commissioner of Education in New York, I issued an order to the Board of Education of the City of New York to provide for thousands of handicapped children on waiting lists to be helped. New York City anticipates that the implementation of this order will be \$63 million.

I have made sufficient copies of the New York State Board of Regents' position paper available so that you may become familiar with our aims and goals of educating handicapped children in New York State. You will see that we have many similarities in priorities and thrusts.

It has been a pleasure discussing with you our common interest in helping each handicapped child to reach his or her greatest potential.

Mr. BRADEMAY. Thank you very much, Mr. Nyquist, for a most valuable statement. Let me put three or four questions to you.

One, what comment can you give us with respect to the question of limitations on the purposes for which money provided under the act might be put? For example, should we say that the moneys ought not to be used for facilities construction? Obviously, we don't have all the money we want and I think I am correct in saying most of the moneys go for the training of people, paying of salaries of personnel working with handicapped children.

Do you have any comments?

Mr. NYQUIST. I would limit the use of money for the construction of new facilities. Money for remodeling would be in order to provide access to existing facilities for some handicaps of children and special program needs.

Mr. BRADEMAY. I come to the definitions, which obviously have a great deal to do with where the money goes. Therefore, I turn to a second question, namely, of the definition of "handicapped children" for purposes of this legislation. You can readily see that if we did not impose some kind of limitations on the definition of "handicapped children," the definition might be so broad as to allow States to insist that they have to have money for this, that and the other things.

Mr. NYQUIST. We have met that problem. I think, head-on in our position paper.

Do you have copies, Mr. Chairman and members of the committee, up there?

Mr. BRADEMAY. It may be, I have not seen them. I will ask the staff to provide them.

Mr. NYQUIST. I think it should be broad and inclusive for a comprehensive program. On pages 8 and 9 of this position paper we identi-

fied the following definitions: trainable mentally retarded, severely emotionally disturbed, hearing impaired, visually impaired, speech impaired, neurologically impaired, physically handicapped, learning disabled, educable mentally retarded. Under each of those categories you will see our definition of each. I think if you specify something like that, it won't be so all-inclusive that you could spend money on almost anything, but rather, a comprehensive program would be offered.

Mr. BRADEMAs. Could you tell us what is the situation in the State of New York with respect to judicial rulings as to the constitutionality of access to special educational services for handicapped children?

Mr. NYQUIST. We do not have any court decisions as in Pennsylvania and other States.

In my capacity as Commissioner of Education of New York State, besides having an administrative capacity I have a judicial function and can hear and educational grievance in the State. The judicial function is carried out like a court procedure. As I mentioned earlier in my testimony, I recently made a decision called the *Riley-Reid* decision, which orders New York City to educate, and pay for the education of handicapped children not now being served will mandate. I retained jurisdiction in this case and will have further hearings in a week or so prior to giving a final order.

Mr. BRADEMAs. Let me put it another way. Is it now accepted in the State of New York that handicapped children have a constitutional right to appropriate educational services?

Mr. NYQUIST. Following decisions made on other courts and my own decision in New York State that is true.

Mr. BRADEMAs. That is no longer a matter of contention?

Mr. NYQUIST. We have a very aroused group of parents in the State. The legislature itself assigned high priority to this area.

Mr. BRADEMAs. I hear you saying the answer to my question is "yes," and the Pennsylvania situation renders the State of New York moot.

Is my question clear? In other words, does the case lie in the State of New York or has the question been settled by the Pennsylvania case which has often been cited as the major example. Is education of the handicapped still a question, a controversial issue, in New York? Or has the matter been resolved? Is the matter of the constitutionality of providing special services for handicapped children still up in the air legally? I am still not getting through to you.

Mr. NYQUIST. Yes, I am searching for an equally lucid answer. I think the case is compelling, let's put it that way, but I don't know of any formal judicial decision other than my own that is in the courts.

Mr. BRADEMAs. Have you so ruled?

Mr. NYQUIST. Yes, I can furnish a copy of that *Riley-Reid* case. I think Mr. Javits put it in the Congressional Record.

Mr. BRADEMAs. Let me ask you about another question. You remarked in your testimony how very expensive it is to educate handicapped children. I wonder if you could give us any comment; this is a very broad question: Aside from the moral aspects of the problem, what about the matter—given the very high cost of educating handicapped children—of the cost effectiveness of doing so as distinguished from failing to educate handicapped children?

I note, for example, you say the cost for treatment and care of children confined in institutional custodial settings is \$10,000 a year.

What I am trying to get at is obviously this: With the cost in dollars and cents terms—one would have to figure out how you define those terms—can a case be made, aside from the moral aspects—that the taxpayer is better off in investing in the education of handicapped children rather than failing to do so?

Mr. NYQUIST. I believe so. Whenever possible, we mainstream these children rather than setting them apart.

Mr. BRADEMAs. You have said that at least 200,000 of 459,000 handicapped children in New York State do not receive professional services. Given that fact that you have acknowledged—namely, that they do need these services and do have a constitutional right to them—why don't the parents of all those children have you in court?

Mr. NYQUIST. They are making their concerns known.

Mr. BRADEMAs. Why don't they have you in court saying you are not obeying the law?

Mr. NYQUIST. The *Riley-Reid* case is the first case regarding this issue to be brought before me in my judicial capacity.

Mr. BRADEMAs. If I am the parent of a handicapped child in the State of New York—and the child is included in the 200,000 who do not receive special educational services—and if, on the other hand, you in your judicial capacity have ruled my child has a right to special constitutional services, why can't I take you to court to see that my child is taken care of?

Mr. NYQUIST. I am told that thousands of children will have to be provided for in New York City next year. I have not assumed a passive role with regard to handicapped children. It has been the other way around, and believe me, it is not easy in this area.

Mr. BRADEMAs. One of the reasons I undertook to sponsor this bill is the dilemma you have faced in your State where you have to assume two hats, the judicial and the administrative hats. If you are going to be able to comply with that constitutional requirement and you don't have the money, you are between the rock and a hard place.

Mr. NYQUIST. May I say I appreciate your concern for New York, Mr. Brademas.

Mr. BRADEMAs. That is a local joke, very local. One other question: Again coming back to those 200,000 children—it is a very rich State, by the way—can you tell us how the State and local agencies decide which of the handicapped children get the services and which ones do not? And in that connection, are those children who do not normally receive services, those with the most severe handicaps?

Mr. NYQUIST. I can answer the last part first. It is much more difficult to provide for the multiply handicapped. In the past, although I don't think so any longer, they were the most neglected.

The department does not have any operating responsibility except for two schools, one for the deaf and one for the blind. At first, only children deaf or blind were admitted to those two schools. In my administration over the last 4 or 5 years, I have insisted on admissions that include the multiply handicapped. That is, if you are principally blind but you have other handicaps. It has been very tough getting this accepted in the communities in which these schools are located.

Mr. BRADEMAs. How do you decide who makes the decisions? Who makes those decisions?

Mr. NYQUIST. Local school districts in some respects; every school district has an advisory evaluating committee composed of parents and professional people.

Mr. BRADEMANS. Does your agency get into it at the State level?

Mr. NYQUIST. Yes. If the local school cannot accommodate a child who has special needs, my department makes a decision, that the child can go in or out of State to a private school and we pay \$2,000 a year for the education of that child.

Mr. BRADEMANS. Mr. Hansen.

Mr. HANSEN. Thank you, Mr. Chairman.

Going back to the numbers you stated as to the handicapped children within the State of New York, you pointed out, as the chairman has noted, about 200,000 school-age children with identifiable handicaps but who are not receiving any special education. Where are these 200,000?

Mr. NYQUIST. Both in and out of school. That is why that phrase "special educational services." Some of them are not in school.

Mr. HANSEN. Would it be correct to conclude that you have quite a number of those at both extremes? That is, those with fairly minimal handicaps that should receive specialized treatment but in some way are able to get along in regular classes?

Mr. NYQUIST. That is correct.

Mr. HANSEN. And some so severely handicapped they can't go to public schools at all?

Mr. NYQUIST. Correct.

Mr. HANSEN. The thing that bothers me in trying to establish statutory language or a formula that will be fair to all States is the matter of cost because of the matter of disparity.

Mr. NYQUIST. Costs vary within a State and between States.

Mr. HANSEN. Would you give us some guidance in developing some kind of fair formula?

Mr. NYQUIST. We like the one in H.R. 70. We think we are a leading State; we think we do a quality job in our boards of cooperative educational service, State-operated schools, private schools, and local school districts. Quality costs money at any time, but for the handicapped it costs a great deal more. I don't think the States should be penalized if they are trying to do a quality job.

Mr. HANSEN. Don't you still have a variation among States as to what is actually being done on the cost structure?

Mr. NYQUIST. Yes.

Mr. HANSEN. I think this is going to be one of our most difficult problems.

I want to touch on one other area that I think should receive a great deal of attention, and that is the problem of developing the qualified teacher-specialists to do the job. We have recognized the need for a very large increase in our level of support, partly under the stimulus of court decisions, and States, as in the State of New York, other States are moving. We see the initiative in this legislation, recognizing the problem and the need to do a great deal more for a great number of students. But for the teacher-specialists to perform the tasks that are anticipated in this legislation and the ongoing programs of the States, it involves some very specialized skills with the kind of

understanding and sensitivity that may not be required in the same degree in other teaching situations.

Mr. NYQUIST. That is right.

Mr. HANSEN. What can you say about the plans we are making for the identifying, training, selection, preparation of teachers in the numbers that will be required with the skills that will be required?

Mr. NYQUIST. I would respond this way: First, New York State, beginning in the fifties, appropriated its own funds for grants to retrain teachers who may have been in some other subject area but wanted to teach the physically and mentally handicapped.

Then came the Education of the Handicapped Act, with one section in there that provides some funds for this same purpose.

This is one of the biggest stumbling blocks to doing, as you said, the right job here. I think markedly increased funds for this purpose would be appropriate. There is supposed to be a surplus of teachers generally, and to retrain them, these people who have been educated otherwise, for this purpose, would be the appropriate thing to do. These people want jobs and this might be a lure that might be useful.

Mr. HANSEN. I would just conclude by expressing the hope we would address these needs in the course of developing this legislation so we know what will be required and the training programs can be developed and supported so as to furnish the services required.

Thank you, Mr. Chairman.

Mr. BRADEMUS. I have just a couple of other questions. Let me indicate first to you on page 4 of your statement, concerning the definition and interpretation of the language in section 5(a)(2)(B), that the interpretation you indicated you support is indeed what is meant by the language in the bill.

Could you give us a comment on the question of the definition of "excess costs"? Do you in New York State have a definition of "excess costs" for your own intrastate purposes?

Mr. NYQUIST. Not in the sense you have stated in H.R. 70.

Although, there will be in the New York State Legislature a bill to make some radical adjustments in the State aid formula. One is the weighting of two for every handicapped child so areas with large numbers of handicapped children will get twice the amount of State aid for a handicapped child as for a normal child.

Mr. BRADEMUS. One other point you raised with respect to problems of retaining confidentially if the records of handicapped children were maintained on the State level. Do you have any additional comments in this regard?

Mr. NYQUIST. Well, it is an invasion of privacy and we have had this issue raised with respect to the handicapped. Coded lists are one thing. I think it would not raise a hue and cry that we need not have raised if we put this responsibility at the local level.

If the State would collect figures, that would not include names, that would be another consideration. But that is not the way I read the bill.

Mr. BRADEMUS. Earlier we were talking about the problem of the definition of "handicapped." I understand on occasion children may be incorrectly labeled as suffering from a handicap— as, for example, having a learning disability or being mentally retarded—when the child is not, in fact, handicapped?

I would ask you: Has the problem of misidentification of handicapped children been a problem in your State?

Mr. NYQUIST. No, it has not. We have been very conscious of this, particularly with our long concern for minority groups. As far as I know, the issue has never bubbled up in our State. I am glad to say.

Mr. BRADENAS. Thank you very much for your testimony and particularly for the very constructive suggestions. We are very grateful to you and Mr. MacKinnon.

I would ask unanimous consent that there be inserted following our colloquy the text of the position paper entitled "The Education of Children with Handicapping Conditions."

Mr. NYQUIST. Thank you very much.

[The position paper referred to follows:]



A Position Paper . . .  
. . . No. 20 of a Series

# THE EDUCATION OF CHILDREN WITH HANDICAPPING CONDITIONS

*A Statement of Policy  
and Proposed Action  
by the*  
REGENTS OF THE  
UNIVERSITY OF THE  
STATE OF NEW YORK

THE STATE EDUCATION DEPARTMENT  
ALBANY  
NOVEMBER 1973



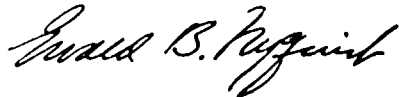
## FOREWORD

New York State is committed to providing equality of educational opportunity for every child. That commitment requires that education be provided for children with handicapping conditions. Many such children, however, are not being educated adequately or at all, despite diverse and varied public and nonpublic efforts. In some instances, divided State agency jurisdictions yield less than a unified approach to the education of these children.

The Fleischmann Commission estimated recently that more than 200,000 such children presently are not receiving any special services. Among the various factors contributing to this condition are, inadequate procedures for identification, screening, diagnosis and placement, lack of interagency coordination, and other shortcomings which prevent schools from educating large numbers of these children.

The Regents set forth in this paper their philosophy of education for children with handicapping conditions and call for appropriate courses of action. Central to their recommendations is a viable and functional system of advocacy which places responsibility for the education of these children in the local school district and provides for review and supervision under the Commissioner of Education. The State's responsibility is to insure that the interests of individual children with handicapping conditions are met, to insure that their rights to quality education are realized no matter where they are housed, and to insure that all such children are educated in compliance with the Regent's philosophy of education for children with handicapping conditions.

The Regents call for affirmation and swift implementation of the recommendations herein which are basic to the education of these children



*President of the University and  
Commissioner of Education*

## INTRODUCTION

The Fleischmann Commission urged recently that the State deal in a more effective and compassionate manner with children who have handicapping conditions. It was emphasized in the Commission's report that such children must be provided with substantially greater educational opportunity than now exists, that the State make a greater effort to identify the specific educational needs of these children, and that appropriate resources be allocated to meet these needs. The Commission reaffirmed that all children in the State should have an opportunity to learn the basic skills and competencies which will allow them to adjust to society regardless of home background, or of mental, emotional, or physical impairment.

Toward this end it is essential that New York State provide a comprehensive and unified system of special education resources, services, and programs for children with handicapping conditions and that adequate fiscal and legislative support be provided if a statewide plan for action is to be implemented. The educational progress of these children must not depend upon the place of birth or residence, the attitude of a community, or other considerations which prevent them from receiving equal treatment under the law. A statewide approach is necessary to combine the effectiveness of State law, State fiscal support, community agencies, and local school district responsibilities for the education of children with handicapping conditions.

## PHILOSOPHY

The Regents strongly urge that the education of handicapped children requires a much more substantial commitment and investment by society than is now the case if they are to receive educational opportunities to which they are entitled. The Regents also believe that the primary and basic responsibility for such a program rests with the local school district, that it must be an integral part of public education, and that far more stringent means of monitoring the educational placement and progress of the children involved must be instituted if desired objectives are to be attained.

Without doubt, there are many children who are not receiving an education designed to recognize or alleviate conditions which may be termed as handicapping. While the Regents commend the State's system for providing for special needs of so many of its handicapped

children they nevertheless share the deep concern of the Fleischmann Commission about the large numbers of children who are in need of additional special education programs. Some of these neglected children have been placed in public or nonpublic schools or institutions or training schools whether by actions of the courts, State agencies, and others, and some remain in their homes. Tragically, in many of these instances there is no advocate for such children, no person to stand "in loco parentis" to fill the void caused by the absence of parents and the support of a family unit.

The Regents recommend creation of an advocacy system capable of bringing all possible resources to bear on the problems of educating children with handicapping conditions no matter where they are housed. To be successful this advocacy system must have available a full gamut of appropriate educational resources. Such resources include an institutional system requiring a higher degree of individualization than that needed by children in regular school programs. Qualified staff to apply educational technology, methodology, and materials must be supported by instructional materials specialists, pupil services personnel, and others within the school. Community resources must be utilized to the fullest possible extent, and early intervention to preclude the possibilities of unfavorable or irreversible effects of early failure is an essential ingredient.

A successful system of advocacy calls for strengthened cooperation among all agencies in the public and nonpublic sectors having responsibilities for the education, care and housing of these children. To be effective it should provide for the education of children with handicapping conditions through cooperative arrangements agreeable to the Commissioner of Education and to those responsible for the supervision of other institutional programs at the State level. The present duplicative efforts and the often inadequate arrangements for special education deny equality of access to educational services to which all children are entitled. Interagency cooperation is particularly important in the case of children who are housed and cared for in State training schools and child-caring institutions. Clearly a coordinating agent is needed. If the Commissioner of Education were given the clear responsibility for the overall supervision of the program for the education of all children with handicapping conditions, he could facilitate more effective interagency cooperation.

The quality of many publicly operated or supported educational programs is related to the degree to which children with handicapping conditions are grouped or otherwise combined effectively with other children in the mainstream of our schools and society. These children

deserve opportunities to share educational experiences with children in regular classes, in groupings for physical education and music, in cafeteria and assembly, and in other ways and places throughout the everyday school program. Social exchange with other students in the school is vital to aid such children to establish and maintain healthy self-esteem. Opportunities for interaction with the total school environment should be accorded a very high priority in planning for handicapped children.

The ultimate goal is to have children with handicapping conditions become as self-sufficient as their handicaps permit. Although opportunities for achieving long life, personal liberty, happiness, and self-sufficiency are limited for some children, programs enabling them to acquire an education, cultural enrichment, personal fulfillment, and vocational success are of vital importance to society as well as to the individual. Such children require understanding, acceptance, and help from the schools to fit well into society. The State and its subdivisions have an obligation to educate these children so they can learn to cope with their own physical, mental, or emotional disabilities, as well as with the often limited and stereotyped perceptions of others.

### **WHO ARE CHILDREN WITH HANDICAPPING CONDITIONS**

While authorities differ somewhat in their views of the definitions of children's handicapping conditions with which special education is concerned, the distinction between a handicapping condition and normalcy is generally clear. However, this distinction may at times be obscured by the wide range of developmental and maturational difficulties or disabilities related to learning, some of which are transitory and others of which are permanent.

Commissioner's Regulations, 184 (200.1), provide the following definitions:

- (a) A "handicapped" child is one who, because of mental, and/or physical, and/or emotional reasons, is not benefiting or cannot be expected to benefit from regular classroom instruction, but who can benefit from special services and programs which include, but are not limited to, transportation; home teaching, special classes, special teachers; pupil personnel services, resource rooms or other special facilities, and/or those services, facilities, or programs which can be obtained through the payment of tuition to boards of cooperative educational services, vocational educational and extension boards, public school districts, or other State Education Department approved agencies.

- (1) A "mental reason" means a condition which impairs or limits a child's intellectual functioning.

- (2) A "physical reason" means a condition which incapacitates the child and includes orthopedic, visual, auditory, neurological, cardiac, and other medical conditions which result in inability to benefit from the regular educational programs for non-handicapped children, i.e. without some form(s) of special provision.
- (3) An "emotional reason" means a condition of psychosocial origin leading to behavior which interferes with the child's ability to adjust to and benefit from existing regular class programs.

As a guide for action, the Regents identify the following general definitions of handicapping conditions:

*"Trainable Mentally Retarded,"*

refers to those individuals whose IQ falls within 25-50 range, are unable to profit from typical educational approaches, and usually possess self-care skills.

*"Educable Mentally Retarded,"*

refers to those individuals whose IQ falls within 51-75 range, are able to profit somewhat from education, and can be self-supporting.

*"Severely Emotionally Disturbed,"*

refers to those individuals with emotional problems severe enough to prevent them from making the necessary adjustments for effective functioning in the culture.

*"Hearing Impaired,"*

refers to those individuals who experience a loss of hearing, but have some hearing which is usable, or who are completely unable to hear, or who possess a serious deficiency in hearing dating from before the age at which the comprehension of speech is normally acquired.

*"Visually Impaired,"*

refers to those individuals who cannot read normal print and need to use large print and/or recorded materials, or who need to use Braille or recorded materials.

*"Physically Handicapped,"*

refers to those individuals who have a disruption of normal bodily functions due to some intervening pathological process other than mental.

*"Speech Impaired,"*

refers to those individuals who possess a disorder at the verbal level that interferes with communication, calls attention to itself, and causes its possessor to be maladjusted.

*"Neurologically Impaired,"*

refers to those individuals who have a disorder in one or more of the basic psychological processes involved in understanding or in using language spoken or written; the disorder may manifest itself in imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations. Such disorders include such conditions as perceptual handicaps, brain injury, minimal brain dysfunctions, dyslexia, and developmental aphasia.

*"Learning Disabled,"*

refers to those individuals who experience a disorder in one or more of their abilities to comprehend spoken language, speak, read, write, perform tasks appropriate for a given chronological age or acquire and efficiently retain and utilize knowledge and skill necessary for functional participation in a regular school program with their peer group on a full-time basis.

In March 1971 a State Program Analysis Review Committee report indicated that in 1969-70 an unduplicated count of more than 283,000 children were served in educational programs for the handicapped. This count was broken down by category of handicap, by agency, and by program. Over 187,000 children with handicapping conditions were enrolled in local school districts and 23,233 in BOCES programs. Close to 32,000 students received instructional services under the auspices of Vocational Rehabilitation, local and BOCES sponsored occupational programs, State funded private and State operated public schools for the blind and for the deaf, the Human Resources School, the Readers Aid program and in private schools offering programs authorized by sections 4001, 4403 and 4407 of the Education Law. Additionally, nearly 42,000 pupils were served in educational programs for the handicapped which were operated by other State agencies: Mental Hygiene, Health, Correction, Social Services, Division for Youth and the State University.

**AN ADVOCACY SYSTEM**

The system of advocacy proposed here is designed to assure that children with handicapping conditions receive educational opportunity commensurate with their needs. The system would insure this oppor-

tunity at local school district, large city, cooperative board, regional and State levels. A successful system requires that educational provisions for each child with a handicapping condition be subject to close functional and operational overview by someone with sufficient administrative, supervisory, and fiscal authority to bring about constructive changes, where needed, in the educational program for that child, wherever he is cared for or housed. This paper proposes that the system of advocacy should be vested ultimately by statute in the Commissioner of Education, that local school districts, BOCES, and other State agencies have a proper role to play and that, wherever possible, parents represent the starting point.

The rights of parents to be involved in the education of their children are well established by tradition, statute, and common law. Participation by parents in the education of children with handicapping conditions is especially critical, since it enables parents to help overcome the adverse environmental and psychological factors which often confront the child and his family. It is desirable that educational planning for these children include provisions for the direct involvement of parents not only as advocates for their own children but at appropriate levels in the advocacy system. Thus, parent representation, as well as that of laymen and professionals is needed on committees concerned with the education of the handicapped.

The education of all children including those with handicapping conditions is initially and fundamentally a responsibility of the local school district. To implement this responsibility the Regulations of the Commissioner of Education require that the local school district appoint a local committee on the handicapped with a charge to insure that necessary procedures for the identification, diagnosis, placement and annual review of the status and progress of every such child in the district are carried out. The work of this committee is focused primarily on assuring individual pupil programming, including a consideration of all diagnostic input, plus available and potential special education resources and facilities. The committee should be satisfied that the collection and maintenance of pertinent records and the coordination and improvement of educational services for these children are properly conducted in each district.

The Regents view the local district committee on the handicapped as the general and sometimes specific advocate of the handicapped child. The school district is expected to handle operational details while the committee will be expected to address specific concerns and to furnish recommendations to the local board of education. The committee stands as an important advisory group and general child advocate for each school community.

In those cases in which parents or interested agencies disagree with determinations of the local committee, the superintendent or the board of education, an appeal of such a determination may be directed to the Commissioner of Education.

Larger school districts, including New York City community school districts, may find it necessary to appoint more than one committee on the handicapped. Membership on these committees must include, but is not limited to, a physician, school psychologist, school social worker, teacher of children with handicapping conditions, administrator of special education, and parents. In addition, membership should be representative of the community being served.

When a child with a handicapping condition is placed in an educational program outside of his local school district, it is necessary for the receiving facility or agency responsible for his education to file periodic progress reports for that child with the chief school administrator of the child's home school district. The responsibility for preparing such reports applies to any facility or agency to which the child may be sent, including a cooperative board, private school, nonpublic school, State operated school, a school receiving State funds, or a program operated by another state or community agency. The chief school administrator of the home school district would then provide the school district's committee on the handicapped with summary data for review and recommendation.

The local school district has the responsibility to provide adequate pupil services for early diagnosis, prescription, and other educational functions for handicapped children as soon as there is an awareness of handicapping conditions.

In order to assure early attention, the local school district should have direct contact with health service offices and institutions where the first detection of handicapping conditions can most easily occur. Physicians, persons and agencies concerned with children, as well as parents, should be fully acquainted with referral procedures so that guidance and counseling of parents will begin as early as possible along with early planning for the child.

To facilitate early detection of handicapping conditions, it is imperative that a system for collecting and maintaining medical information be developed. It seems reasonable to require that every preschool-age child receive regular medical examinations, either by private physician or public clinic, and that parents or guardians be provided a cumulative child health record through this process. At the same time, examining physicians would report handicapping conditions as discovered at birth or subsequent examinations to health service authorities, thus establishing a child record which can be utilized as a basis



for referral to school district authorities for early positive intervention. School districts would then use this information for further analysis and development of programs by diagnostic-prescriptive professionals or teams as may be needed for this purpose. It is recommended that such teams be comprised minimally of a physician, psychologist, psychiatrist, school social worker and a teacher of children with handicapping conditions.

To alleviate the effects of adverse societal pressures and to promote the growth of wholesome personalities among the handicapped, it is necessary for local school districts to intensify and broaden instructional program options. Wherever possible, it is desirable that such children be educated within the same facility as children who do not have handicapping conditions. For example, an educable mentally retarded child might be assigned to the fourth grade of his neighborhood school, and hence be retained in the mainstream of education because appropriate provisions were made for the child. These provisions might include an itinerant teacher, resource room paraprofessionals, inservice training for the regular teacher, or a supportive special education instructional materials center for pupil services. These services may be contracted from cooperative boards, private agencies or provided locally in larger school districts.

It should be understood that successful mainstreaming will require extensive preparation and supportive services. For example, a pre-school program for handicapped children ages 3-5, which would train them in self-help skills and develop self-confidence, will go far to enable such children take their places with normal children in a normal setting. Changes in teacher training will be essential to successful implementation of this approach.

## **COOPERATIVE BOARDS AND LARGE CITIES**

Cooperative boards have a special role in providing services which cannot be furnished by the local school district. These services may be provided by a single cooperative board or by contract between two or more cooperative boards. However, the local school district remains responsible for the child's education regardless of where he is served. Regulations of the Commissioner of Education provide guidelines for cooperative board committees to serve combinations of local districts in which it is not possible or feasible to develop local district committees on the handicapped.

1. It is necessary that cooperative boards and large cities establish those desirable broad-based programs which cannot be supported efficiently at the local level, and develop procedures to maximize the use of resources on a regional basis. Certain chil-

dren with severe handicapping conditions such as the trainable mentally retarded, multiply handicapped, and the severely emotionally disturbed or learning disabled children will be educated in cooperative board programs. Additionally, an educable mentally retarded child might receive vocational training in a cooperative board program. When it appears to be desirable for local school districts to maintain children with handicapping conditions in local programs, cooperative boards will frequently provide the necessary support systems.

- 2 District superintendents and superintendents of large cities are expected to provide the leadership for the creation and operation of inter-agency advisory committees for the geographical area of the State which they serve. The coordination of agencies with specific resources available for such handicapped children is considered to be critical to the success of assisting children placed in their care.

## STATE EDUCATION DEPARTMENT

The State Education Department assumes responsibility for planning the overall structure of educational services for children with handicapping conditions by setting standards for curriculum, professional development and licensing, supervision, pupil services, parent participation, buildings, and fiscal control in order that every such child will receive the services he needs regardless of his geographical location, economical circumstances, or the degree of his handicapping conditions. The Commissioner will also take the initiative to further the education of these children below the legal entrance age and of adults beyond regular school attendance age.

The Commissioner of Education will review all appeals regarding the educational placement of handicapped children and will exercise whatever authority is needed to resolve the conflict. Further, the Commissioner should be given the responsibility for insuring the education of handicapped children in other State or nonpublic schools and institutions. To facilitate this work the aforementioned inter-agency advisory committees for the handicapped, established in each region, will coordinate State services for the handicapped children involved.

The following list of responsibilities describes activities of the Education Department within the total system for the education of children with handicapping conditions:

1. Promote the identification and screening for handicapping conditions by county and city health offices and by all the schools in each region, both public and nonpublic as appropriate.
2. Ensure the development and maintenance of handicapped pupil registers within each region.

- 3 Promote the establishment of multi-disciplinary diagnostic and prescriptive teams and support services as needed by local boards, BOCES, and in the cities of New York, Buffalo, Rochester, Yonkers and Syracuse.
- 4 Review the adequacy and comprehensiveness of all programs of special education in each region
5. Ensure the appointment and proper functioning of committees on the handicapped as required by the Commissioner of Education
6. Review referred individual exceptions to the principle of home district location to determine whether all reasonable effort has been made to provide special educational resources or placement in the home district and direct such action as may be necessary.
- 7 Determine the amounts to be approved for State funding in situations where a child with a handicapping condition is educated other than by his home school district
8. Promote interagency cooperation at the regional level, including planning for coordinated utilization of resources available to State, cooperative board, large city, local school district, and nonpublic units which are concerned with general, special, occupational, rehabilitative, and other education services.
- 9 Make recommendations for the coordinated utilization of Federal, State, local and other funds available for the education and development of the handicapped, regardless of age
- 10 Serve as an appeal agent for parents of children with handicapping conditions in the event such parents dispute the resources, allocations, or placement decisions of local school districts or cooperative boards.

The State Education Department will administer financial provisions for pupil and teacher support systems on a State, regional or local basis, as necessary. The Department will also serve as a disseminator of information on teaching practices and instructional materials for programs involving these children, and will give encouragement to public school districts, cooperative boards, State operated and State supported schools, and nonpublic, nonprofit special schools for innovative research and demonstration programs in special education. The Department will encourage the employment of teachers and other staff members with handicapping conditions for such teachers serve as an example and an inspiration to all children and adults. Finally, all programs operated or supported by the Department must be evaluated periodically, and reports of these evaluations shall be submitted to the Commissioner of Education for his information and reports to the Board of Regents.

The State Education Department will prepare a State action plan to include all of its responsibilities and objectives for the education of

children with handicapping conditions throughout the State. This plan will state one-year and five-year projections of activities to accomplish the Regents recommendations with indications of responsible levels, agencies, units or people designated for each objective or task, and an estimated time frame for the successful accomplishment of the objective or task. This statewide action plan for the education of children with handicapping conditions will be revised annually in light of input from the local school district, cooperative board and regional action plans that will be submitted to the Department from throughout the State.

### **FISCAL**

To carry out the recommendations of the Regents, adequate financial resources are needed by the State's system of education. It is proposed that handicapped children, educated locally, be weighted at 2.0 for State aid purposes. It is further proposed that local districts participate to the extent of the average expenditures applicable to all district students and that the State assume all excess costs for the education of children with handicapping conditions who are not educated locally. This would guarantee that local school districts, cooperative boards, and other parts of the system would be able to provide adequate and appropriate programs for such children. The overriding tenet will be to ensure that there be no difference in cost to the local school district wherever such a child has been placed in the State's system of education. To accomplish this, each local school district would be required to pay toward the education of a child with a handicapping condition an amount of money equal to the local contribution that the school district spends from its local resources for the education of each child in the local school district. To effect such a system, the Regents propose legislation as follows:

- 1 When a handicapped child meeting a legal definition is educated in the local school district in a program approved by the Commissioner of Education that child should be weighted at 2.0 for State aid purposes. There is substantial evidence from State and national studies that the cost of educating a child with special needs is on the average at least twice that of the education of other children.
- 2 When a child with a handicapping condition is placed outside the local school district for educational purposes, the district would be required to pay its local contribution as mentioned above. By this principle, the local school district continues to contribute to the education of such a child on a basis equal to its contribution to the education of other children from local funds, and maintains its basic responsibility to the child. If a

child attends a cooperative board class, the excess cost of educating such a child would be reimbursed to the cooperative board upon the prior approval of expenses to be incurred. Such a system will guarantee that cooperative board programs operate at minimum levels of enrollment while insuring protection against excessive expenditures.

3. Similarly, when a child is placed in a State supported or State operated school, or a school approved by the Commissioner of Education for funding under Section 4407 of the Education Law, the local school district shall contribute the amount applicable to general students in the district. Since the budgets of the State operated or State supported schools are presently approved by the Commissioner of Education as well as by the budget office of the executive branch of the State government, fiscal responsibility and accountability are currently insured. When a child attends a school approved by the Commissioner of Education for funding under Section 4407, the amount of State reimbursement to the parents for payment to the schools shall be determined by the Commissioner of Education.
4. When children are to be educated in schools operated by other State or community agencies including the State Departments of Health, Mental Hygiene, Social Services and the Division of Youth, the local school district shall pay to such institution an amount of money from its local funds as described above. Excess costs for such education shall be paid to the appropriate agency by the State upon the approval of the Commissioner of Education.
5. It is recommended that the costs of post-identification screening, diagnosis, prescription and monitoring will be eligible for reimbursement as excess costs for educational purposes. Efficient and effective use of all resources will require some reallocation by local and State Departments of Health, Mental Health, Social Services, and other agencies of personnel and other resources to accomplish the purposes of the local State program. Such resources include the services of physicians, psychiatrists, social workers, health specialists, research workers and others who are presently providing peripheral supporting services for children with handicapping conditions. The allocation of these resources will require the involvement of the inter-agency advisory committees mentioned earlier.
6. There is overwhelming evidence to indicate that early intervention in the life of a child with a handicapping condition is correlated positively with the success of such intervention. To insure such success the Regents recommend that the State assume full responsibility for the costs of educational programs for all handicapped children below the legal entrance age.
7. More extensive research and development programs are needed, particularly if more is to be known about the effectiveness of various approaches to the integration of children with

handicapping conditions with other children. While there are some federally funded programs related to research on mainstreaming, there is a desperate need to combine such efforts with research on peer attitudes, teacher attitudes and those other factors which affect pupil achievement. The effectiveness of education for such children needs to be studied in relation to the role of the special educator, paraprofessional, school administrator, parents, pupil services workers, agency professionals, and the child's peers. Experimental models of programs designed to instruct others regarding the problems of institutionalized children so such children can be returned to and integrated within their home community are needed. To promote better programs the State Education Department needs the capability to sponsor research efforts to study the integration of children with differing types or degrees of handicapping conditions, for study of mainstreaming models, such as use of resource rooms and itinerant teachers, and for cost effectiveness studies. As diagnostic techniques become more effective and such services are targeted to early detection, research will also be needed to develop effective models of pre-school and early childhood intervention.

The Regents propose that the State Education Department be allocated 0.1% of the amount of State support for the education of children with handicapping conditions to support approved research and development programs.

8. The Special Education Instruction Materials Centers (SEIMC) system in New York State is a system which has great potential to provide support services to every area of the State, but the State needs to provide further fiscal support for the expansion of this network of centers. This expansion would provide many benefits to teachers such as computer-based resource units (a promising application of computer technology) as an aid to teachers in their planning of classroom management for individualizing instruction of children with handicapping conditions.
9. The State Education Department will require additional financial resources in order to assist the Commissioner in the execution of the new demands to be placed upon his office by this position statement and plan for action. Effective supervision of the advocacy system; the additional financing for programs, research, support systems; and the necessary regulations are several of these additional responsibilities.
10. The present provisions for transportation of children who are handicapped must be carefully studied and necessary changes in legislation and regulations made accordingly. The present limitations on transportation for the handicapped are discriminatory.
11. The Regents recognize that the implementation of its recommendations will require local school districts to evaluate their present educational facilities in preparation for the operation

of programs to educate many children with handicapping conditions not presently in the local districts

The Regents call for a careful study of these problems at the local level with the assistance of appropriate Department staff so that recommendations for changes in statute and Commissioner's Regulations may be prepared for action.

## LEGISLATIVE

Present laws and regulations do not provide the Commissioner of Education the framework within which to provide equality of educational opportunity for all children with handicapping conditions. A primary problem is that the education of children served by various State agencies is currently the responsibility of the heads of those various agencies. This fragmented effort produces a multiplicity of programs of various qualities as well as inefficiency in the use of funds for these purposes. Inequalities in educational services are a built-in result of an uncoordinated and multi-headed application of efforts toward a single specialized objective — the education of children with handicapping conditions. Clearly a coordinating agent is needed to insure quality programs, and the Regents believe that the Commissioner of Education is the logical choice. To eliminate the fragmented responsibilities of the various State agencies, a legislative plan should be devised during the 1974 legislative session which provides for such leadership and increased efficiency in the use of funds for these purposes.

The Regents propose a consolidation of the legal responsibilities for the education of all children under the Commissioner of Education. To fulfill that role the Commissioner needs to have clear statutory responsibility and fiscal support for a system of advocacy and an educational program for all New York State children with handicapping conditions who can benefit from education, irrespective of where they are located, housed, or cared for, and regardless of what other services are provided by other agencies. Present laws contradictory to this point of view need to be amended or repealed during the 1974 legislative session to eliminate statutory inconsistencies. All publicly funded programs of education for these children should be placed under the legal jurisdiction of the Commissioner of Education regardless of which state or other governmental agency has accountability for the child for other purposes. Such legislation would provide coordination through establishment of an interagency advisory committee comprising representatives of all appropriate agencies, including the State Departments of Health, Mental Hygiene, Social Services, Board of Social Welfare, the Division of Youth, and the State Education Department.

Under the present law, a local school district can deny a child the benefit of a special educational program. There is a need for a firm provision requiring the inclusion of children with handicapping conditions in regular classes or in other mainstream educational activities where appropriate.

The legislative plan should assure the right of a child to attend a publicly supported educational program regardless of which agency provides housing, child caring or other services. Local school districts will be expected to provide an education for each child who is able to benefit from it; to contract with another school district, non-profit agency, or cooperative board for this purpose when appropriate; or to use a State supported or State operated program. Provisions for preschool services for census taking, screening, and diagnosis of children with handicapping conditions would be included, as well as measures for the education of parents to assist them in recognizing signs of handicapping conditions and encouraging them to seek diagnostic services. An essential part of this effort is the institution of a comprehensive statewide program of basic screening measures for visual, auditory, motor, perceptual, cognitive, language and speech dysfunction to be instituted under the authority of the Commissioners of Education, Health, Mental Hygiene, and Social Services for both school age and preschool children in order to locate and identify children with handicapping conditions.

Legislation requiring that all new schools in New York State be constructed in such a manner so as to conform to the special instructional requirements of children with handicapping conditions, and with a view to assisting such children to be educated in the mainstream of the regular school environment is necessary. It is also essential that training programs for teachers, school administrators, pupil services workers, paraprofessional aides and all others who work with children include suitable emphasis on the identifying characteristics and education of children with handicapping conditions, and that such training emphasis be continued in inservice education as well.

### **A CALL FOR ACTION**

To accomplish all of the foregoing, the Regents call for the development of coordinated planning and action by all levels and units within the educational system of New York State. Such a cooperative effort would make possible the design of programs and systems that would enable all children with handicapping conditions to realize their optimal capabilities. Toward this end, an ongoing organizational and management process needs to be established at all levels



for the continuous operation and coordination of plans to accomplish these ends, and the foregoing Regents recommendations are expected to become the focus for planning by school districts, cooperative boards, nonpublic agencies, and the Education Department.

In the year ahead, the Regents expect that instructional management information systems will be established on a local, regional and State basis to provide for periodic needs assessment studies so that appropriate educational planning can occur. These systems will provide for program evaluation reviews and pupil assessment studies. As part of this effort, the State Education Department will conduct an annual review of the programs of all public and private institutions receiving State aid for the education of children with handicapping conditions, including their budgets, expenditures, cost per pupil, tuition and overall financial structure. To make this review effective, appropriate authority to approve or require changes which are deemed necessary and desirable is a prerequisite.

The substantive direction of all these efforts is to provide a dynamic educational systems approach to effective educational practices which will provide all children of the State with an opportunity to realize the full potential of their inherent capabilities. The success of this effort will require the immediate, long-range and continuing commitment and support of citizens, professionals and civic leaders from our full State community.

## THE UNIVERSITY OF THE STATE OF NEW YORK

## THE STATE EDUCATION DEPARTMENT

## Before the Commissioner

In the matter of the Appeal of Riley Reid, by his mother Ellen Hoffman, Glen Anderson, by his mother Vivian Anderson, Du'Wain Boyce, by his mother Joan Boyce, Joseph Butta, by his father, Dominick Butta, Ruberto Cancell, by his mother Virginia Cancell, Mildred Greer, by her mother, Mildred Greer, Louis Lambrecht, by his mother, Ceil Lambrecht, Allan Stevenson, by his mother Estelle Stevenson, and the New York Association for Brain Injured Children, and all other children similarly situated from action of the Board of Education of the City School District of the City of New York and Harvey B. Scribner, Chancellor of the City School District of the City of New York, with regard to educational services for handicapped students.

*Carolyn Heft, Esq.*, attorney for petitioners. *Hon. Norman Redlich*, attorney for respondents. Corporation Counsel, *Joseph Bruno, Esq.*, of counsel.

Petitioners brought a proceeding in the United States District Court for the Southern District of New York to determine the rights of petitioners as handicapped students to educational services in the respondent district. On June 22, 1971, the Court denied petitioners' motion for a preliminary injunction to prevent the Board of Education of the City School District of the City of New York and Harvey B. Scribner, individually and as Chancellor, from denying brain injured children adequate and equal educational opportunities, and granted a cross-motion by the defendants to dismiss the complaint. On December 14, 1971, the United States Court of Appeals for the Second Circuit held, in *Matter of Reid et al. v. Board of Education*, 453 F. 2d 238, that the District Court properly abstained from deciding claims based on the United States Constitution pending a determination by New York State authorities as to related but unanswered questions of New York State law, but should have retained jurisdiction pending such a determination. Petitioners then instituted this proceeding before me.

Petitioners are nine named individuals and the New York Association for Brain Injured Children. The proceeding is also brought on behalf of a class which is stated to include all those children in the City School District of the City of New York who are handicapped but are not receiving appropriate educational services, in violation of their statutory rights. Petitioners include within that class all students who are either attending private or public schools or for whom the respondents do not provide suitable educational facilities or programs.

With regard to all the named petitioners it is alleged that they were not receiving appropriate educational services in the public school system; that they had not been properly examined for the purpose of ascertaining the nature and severity of their handicaps; that appropriate recommendations with respect to placement in proper educational programs have not been made; that waiting lists existed for screening and subsequent placement, and that in the past they were provided with inadequate home instruction during these waiting periods. The record now indicates, however, that as of August, 1973, all the named petitioners are being provided with appropriate educational services either by the respondent school district or by institutions in which they have been placed.

With regard to petitioners' allegations relating to the class described above, I directed the staff of this Department to conduct a detailed and extensive survey in the respondent school district. During the months of June and July, 1973, an investigation was conducted by the Division for Handicapped Children and the Division of Pupil Personnel Services of the State Education Department. The investigation consisted of interviews with 76 parents of handicapped children, 9 community superintendents, 37 principals, 26 professional employees of hospitals and clinics, and representatives of private agencies and employees of the New York City Board of Education. Counsel for the petitioners and counsel for the respondents were in attendance during these interviews. Additional information was obtained through telephone interviews and in response to written requests. In some instances, information requested from the Office of Special Education and Pupil Personnel Services of the New York City school system was not supplied or was inadequate. Approximately 225 man-days were

devoted to the investigation by representatives of the State Education Department.

I find that a class appeal is properly brought in this matter, in that there are admittedly numerous children residing within the respondent district whose educational needs are not being adequately served, as required by section 4404 of the Education Law, which provides, in part:

"The board of education of each school district in which there are ten or more handicapped children who can be grouped homogeneously in the same classroom for instructional purposes shall establish such special classes as may be necessary to provide instruction adapted to the mental attainments of such children from their fifth birthday until the end of the school year during which they attain their twenty-first birthday, or shall contract with the board of education of another school district, a board of cooperative educational services or a vocational education and extension board for the education of such children, under regulations to be established by the commissioner of education."

Parts 101, 200 and 203 of the Regulations of the Commissioner of Education provide for implementation of this requirement.

The Department's investigations have shown several areas in which the respondents have not carried out their obligations set forth in the law and regulations. In particular, I find that the following deficiencies have existed and continue to exist:

1. Undue delays in examinations and diagnostic procedures.
2. Failures to examine and diagnose handicaps.
3. Failures to place handicapped children in suitable programs.
4. Failures to provide available space and facilities for programs.
5. Children placed on home instruction in violation of the purpose of home instruction.
6. Children placed on home instruction who did not receive the required hours of personal instruction in accordance with the regulations of the Commissioner of Education.
7. Handicapped children expelled from public school education for medical reasons when such medical reasons did not preclude benefits from educational settings.
8. Incomplete or conflicting census data on the number of handicapped children residing in New York City.
9. Inadequate means of informing parents of the processes related to special education services, and inadequate plans for parent involvement in effective planning and decisionmaking regarding their children.
10. Suspensions of handicapped children from classes without adequate notice or provisions for alternate educational services.

With regard to failures by the respondents to examine and diagnose handicapped pupils, I have found that a "Medical Discharge Register" has been established by the respondents and used as a substitute for providing services for children with handicaps and discipline problems. This register lists children who have been suspended and who are not receiving educational services. Such children may or may not eventually be placed in an appropriate educational program by the respondent. It is clear that this type of suspension is not provided for by statute. Suspensions based on discipline problems must be handled in accordance with the provisions of section 3214 of the Education Law. Handicapped students must be provided with educational services if they were capable of benefiting from them, or, from attendance upon instruction. There is no third alternative, as contemplated by respondents' "Medical Discharge Register."

I further find that the functioning of the committee on the handicapped is a failure in the respondent district. To be effective, such committee must function on a regional basis in accordance with a plan developed by the respondents, in consultation with community boards.

Section 4404 of the Education Law clearly expresses the public policy of this State that all handicapped children be provided with adequate educational services. The respondents have, in many instances, resorted to home instruction instead of providing adequate classroom facilities for the handicapped. As noted above, section 4404 of the Education Law provides that where ten or more handicapped students who can be grouped homogeneously require special educational programs, classes must be established for those students. Home instruction should not and may not be used to avoid that mandate. When it has been determined that a handicapped student cannot benefit from class instruction, home instruction may be provided, but only in accordance with the provisions of sec-

tion 2003, paragraph (e) of the Regulations of the Commissioner of Education (*Matter of Valentine*, 10 Ed Dept Rep 53).

Respondents' failure to provide adequate educational programs for handicapped pupils results in large part from their failure to provide adequate physical facilities and staff for the needed services. Again the law is clear that the respondents must provide the required facilities and staff or contact with private agencies in accordance with paragraph b of subdivision 2 of section 4404 of the Education Law.

THE APPEAL IS SUSTAINED

IT IS HEREBY ORDERED that respondents' "medical discharge register" be discontinued forthwith, and

IT IS FURTHER ORDERED that all students who have been diagnosed as handicapped be placed immediately in appropriate public school classes, or, if public school classes are not available, in private schools under contract in accordance with the provisions of paragraph b of subdivision 2 of section 4404 of the Education Law, and

IT IS FURTHER ORDERED that home instruction be provided by the respondents solely in accordance with the provisions of section 2003, paragraph (e) of the Regulations of the Commissioner of Education, and

IT IS FURTHER ORDERED that the respondents forthwith submit to me lists of all children being provided home instruction and the reasons for such home instruction, and

IT IS FURTHER ORDERED that the exemption procedures established under the provisions of part 101 of the Regulations of the Commissioner of Education be followed with respect to those students who cannot benefit from any instruction, and

IT IS FURTHER ORDERED that a plan to eliminate waiting lists for diagnosis and placement be submitted to me by respondents by February 1, 1974; and

IT IS FURTHER ORDERED that the respondents, in consultation with community boards, establish a procedure for regionalizing evaluation of the handicapped not inconsistent with section 2002 of the Regulations of the Commissioner of Education, and submit that procedure to me by February 1, 1974; and

IT IS FURTHER ORDERED that the respondents undertake a study of the needs of the handicapped on the secondary level and that a plan to meet the needs of those handicapped pupils in the junior and senior high schools be submitted to me by February 1, 1974; and

IT IS FURTHER ORDERED that respondents prepare and forward to me not later than February 1, 1974, a plan for notifying all parents and interested persons, in a language understood by such persons, concerning services available for handicapped children and where advice may be obtained concerning such educational services and to whom complaints may be addressed, and

IT IS FURTHER ORDERED that jurisdiction of this appeal be retained pending my further order.

In witness whereof, I, Ewald B. Nyquist, Commissioner of Education of the State of New York, for and on behalf of the State Education Department do hereunto set my hand and affix the seal of the State Education Department, at the City of Albany, this 26th day of November, 1973.

EWALD B. NYQUIST

Mr. BRADEMAS, Our final witness today is Dr. Daniel Ringelheim, chairman, National Advisory Committee on the Handicapped.

We are glad to have you with us. Go ahead, sir.

**STATEMENT OF DR. DANIEL RINGELHEIM, CHAIRMAN, NATIONAL ADVISORY COMMITTEE ON THE HANDICAPPED, AND DIRECTOR OF SPECIAL EDUCATION, NEW JERSEY DEPARTMENT OF EDUCATION**

Dr. RINGELHEIM, I notice I am also listed on the witness list as the director of special education in New Jersey, but I am speaking on

behalf of the National Advisory Committee for the Handicapped. I would like to express my thanks and appreciation for the opportunity to provide testimony on H.R. 70.

In its report to Secretary Weinberger, Commissioner Ottina and Congress, the National Advisory Committee on Handicapped Children put forth as its principal recommendation that "We reaffirm the right under the U.S. Constitution of all handicapped children to a tax-supported and appropriate education regardless of their physical or mental capabilities."

It was the unanimous opinion of the advisory committee that the conditions which are cited on section 2(a) of H.R. 70 were too easily recognized as problems but all too easily disregarded in the marketplace of fiscal priorities, energy shortages and governmental crisis.

This hearing, I am proud to say, is an affirmation that Congress continues to take heed of this continuing inequity.

The National Advisory Committee on Handicapped Children made additional recommendations relating to other issues of concern, and I would like to submit the 1973 Annual Report of The National Advisory Committee on Handicapped Children entitled "Basic Education Rights for the Handicapped"—R. M. N. Crosby, presiding chairman—as part of my testimony.

MR. BRADEM vs. Without objection, Dr. Ringelheim, the report to which you have just made reference will be included following your testimony.

DR. RINGELHEIM. H.R. 70, section 2(a), states that Congress has found that provisions for handicapped children are not being met in many school districts in the Nation, that 60 percent of the estimated number of handicapped are receiving no special educational service and that programs in which some handicapped children participate prevent them from having a successful educational experience.

If we attempt to analyze the root cause of these conditions, one quickly finds the lack of legal and moral commitments in State legislatures, State and local organizational resistance, limitations in quality and scope of professional personnel, as well as the all too often indicated fiscal inadequacies.

One of the key problems, however, is the lack of educational leadership and legislative awareness of the depth of this issue.

We have long accepted the handicapped as "those" children who need special educational services if there were money left in the school budget. We have too easily accepted as a fact of life that handicapped children could be placed on waiting lists, while being provided recognizably inadequate and inappropriate programs as they wait.

We have also remained silent too long in accepting the proposition that a handicapped child could receive no program by an educational agency with total immunity.

In this regard allow me to ask how we would react if we moved to another school district and were informed that there was no third grade available for our child and he had to remain in second grade pending the appropriation of funds.

As a corollary, how would we feel if we were informed that there would be no fifth grade in our school district this coming year and that our fifth grade child would have to do without a program?

If this appears to be an absurd situation to contemplate, it is only because we have committed ourselves as a people to guaranteeing that



this circumstance cannot occur for any reason. Should handicapped children be provided any less a guarantee of an appropriate education program commensurate with their needs regardless of where they reside in this Nation?

H.R. 70 is a prime example of Federal leadership in providing increased financial capability for State and local education agencies to overcome the growing taxpayer resistance to support State programs for the handicapped.

It is a recognition that the 7 percent Federal financial contribution to programs for the handicapped, though an important stimulus to growth, has been unsuccessful in providing the needed impact to the scope and quality of programs nationwide.

It is a recognition of the impact of the courts which have responded dramatically to the denial of basic educational rights of the handicapped but in the process has placed unrealistic financial burdens on individual States.

It is a recognition of the tremendous disparity in the provision of programs and services nationwide, the enormous diversity of fiscal support for handicapped education in each of the respective States and the variety of constitutional and State legislation commitments to providing programs for the handicapped.

Aside from the evident fiscal contribution projected in this legislation, there is much more in its potential for impact on handicapped education nationwide. The National Advisory Committee on the Handicapped would like to commend the sponsors for the scope and quality of the requirements which are an integral part of the funding plan:

The commitment of funds to the educational agencies responsible for handicapped education, the establishment of standards, criteria and procedures for identifying the handicapped, the State planning requirement, the call for identification of all handicapped children, the evaluation of institutionalization procedures, the inclusion of handicapped children not enrolled in the public schools, the requirement that the funds are to be used to supplement and not to supplant State and local funds, the required establishment of an Advisory Committee to review the State plans for the handicapped and the necessity of a plan of accountability assuring an equal education program for all handicapped.

We would like to emphasize our complete and full endorsement of these principles and requirements within the funding provision.

H.R. 70, and its companion legislation S. 6, has the potential for providing the handicapped child the basic quality education he has been denied for too long.

The National Advisory Committee on the Handicapped can only add its voice on behalf of the handicapped to say that the enactment of this legislation may be a fitting beginning to full citizenship for all handicapped as we move to the bicentennial celebration of our Nation's birth.

We commend and endorse your efforts and recommend speedy review and passage.

[The 1973 annual report of the National Advisory Committee on Handicapped Children follows:]

# Basic Education Rights for the Handicapped

1973 ANNUAL REPORT  
of the  
NATIONAL ADVISORY COMMITTEE  
ON HANDICAPPED CHILDREN

June 30, 1973



R M N CROSBY M D  
1010 ST PAUL STREET  
BALTIMORE MARYLAND 21202  
VERNON 7-0404

PEDIATRIC NEUROSURGERY  
AND NEUROLOGY

March 15, 1973

Honorable John R. Ottina  
Acting U.S. Commissioner of Education  
Washington, D.C. 20202

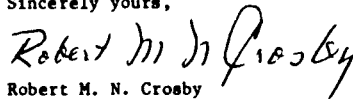
Dear Commissioner Ottina:

As required by the Education of the Handicapped Act, P.L. 91-230, the National Advisory Committee on Handicapped Children has been made responsible for reviewing the administration and operation of the programs authorized by this act on behalf of handicapped children, youth, and adults. This report reflects the status of Federal programs in education for the handicapped and their relation to other public and private programs for handicapped children.

I should like to draw to your attention the concerns of parents, professionals and society as they seek to establish the rights of handicapped children to an education. Federal court actions in Pennsylvania, Washington, D.C. and elsewhere are mandating immediate redress to handicapped children who have been excluded from schools.

On behalf of the National Advisory Committee on Handicapped Children I am pleased to present this 1973 Annual Report.

Sincerely yours,



Robert M. N. Crosby  
Presiding Chairman  
National Advisory Committee  
on Handicapped Children

THE NATIONAL ADVISORY COMMITTEE  
ON HANDICAPPED CHILDREN

The National Advisory Committee on Handicapped Children was authorized under the provisions of Public Law 89-750, the Elementary and Secondary Education Amendments of 1966, which added a new Title VI, Education of Handicapped Children, to Public Law 89-10, the Elementary and Secondary Education Act of 1965. Under title VI, the U.S. Commissioner of Education was directed to establish within the Office of Education a National Advisory Committee on Handicapped Children.

In the spring of 1970 Congress passed Public Law 91-230 which, among its purposes, codifies major education legislation for the handicapped into the Education of the Handicapped Act. This new act continues to authorize the National Advisory Committee on Handicapped Children. It stipulates that the Committee:

shall review the administration and operation of the programs authorized by this title and other provisions of law administered by the Commissioner with respect to handi-

capped children, including their effect in improving the educational attainment of such children, and make recommendations for the improvement of such administration and operation with respect to such children. Such recommendations shall take into consideration experience gained under this and other Federal programs for handicapped children and, to the extent appropriate, experience gained under other public and private programs for handicapped children. The Advisory Committee shall from time to time make such recommendations as it may deem appropriate to the Commissioner and shall make an annual report of its findings and recommendations to the Commissioner not later than March 31 of each year. The Commissioner shall transmit each such report to the Secretary together with his comments and recommendations, and the Secretary shall transmit such report, comments, and recommendations to the Congress together with any comments or recommendations he may have with respect thereto.

## INTRODUCTION

The right of handicapped children to an equal education is now being decided in the courts. The necessity for this court action has been brought about because the handicapped child has had a long and often painful struggle to obtain his place in the American classroom. Time and time again he has won his right to an education only to be pushed out by reorganizations and new sweeps of priorities which economize and eliminate the earmarked support programs which enable the handicapped child to achieve a basic education alongside his brothers and sisters.

The fight to make education for the handicapped child a priority has had some influence within the U.S. Office of Education since the 1929 White House Conference on Children. The early years of this struggle were devoted almost entirely to gathering of statistics and the publication of issues within the field of special education as well as "putting out fires" at the State and local levels as needs of handicapped children became critical. The early works provided a foundation for the expansion of programs for the handicapped.

In the late 1950's the needs of handicapped children became a national concern. Parent organizations brought to the attention of Congress and the White House the failure of local education agencies, State education agencies, and private schools to meet the needs of these children. There were many reasons for this crisis: (1) Better medical care saved and prolonged the lives of handicapped people, (2) families expected greater achievement on the part of the handicapped child to attain self-sufficiency, and (3) society accepted and opened up wider opportunities for sheltered and competitive employment of the handicapped.

The need to know more about these children and what they could and should learn became

self-evident. In 1957 Congress appropriated one million dollars for cooperative research, \$675,000 of which was earmarked for work in the education of retarded children. Under the administration of the Office of Education there continued to be specific designations for research with handicapped children for 2 years. The percentage designated for the retarded in 1957 was 61 and 54 in 1958. In 1963 only 5 percent of the research appropriation was made available for the handicapped.

Although handicapped children have been eligible to receive benefits from most legislation on a permissive basis, they have seldom been able to convince State and local decision-makers of their rights to share in these Federal programs. The Vocational Education Act and the Elementary and Secondary Education Act are two examples of the failure of coverage for the handicapped. Statistics show that poor people are more likely to have a higher percentage of their population handicapped, yet very few programs and projects under ESEA or Vocational Education were designed to include the handicapped.

In 1958 Congress began to provide special legislation (P.L. 85-926) to prepare professional personnel in education of the retarded. In the same year they created an authority for Captioned Films for the Deaf (P.L. 85-905). Shortly thereafter a law was enacted (P.L. 87-276) to train teachers of the deaf. By 1963 it became obvious that this legislation should not be a piecemeal program of fractionated categorical enactment of laws. Public Law 88-161 was a broad authority passed to permit coordination of professional preparation for all areas of the handicapped, with research programs for all handicapped categories. To administer this expanded program a Division of Handicapped Children and Youth was estab-

ished. President Kennedy appointed Dr. Samuel Kirk to lead this new division. The coordination effort was almost immediately evident and Federal support grew from \$1,000,000 in 1960 to \$10,000,000 in 1964.

During the U.S. Office of Education's reorganization in 1965, the Division of Handicapped Children and Youth was disbanded. This action was taken despite a presidential citation in February 1965 for outstanding contributions to greater economy and improvement in government operations. Two months later the Division was the recipient of a superior service award by the Secretary of Health, Education, and Welfare. In spite of the publicly acknowledged excellence of the administration of the program, its components were transferred to comparable general Office of Education functional units. Communication and coordination among research, training, and services for the handicapped was dissipated. As a consequence, the development of needed education of the handicapped was diminished and reduced in effectiveness. The lack of a visible and viable administration was sorely felt in the implementation of federally supported programs.

After lengthy deliberations and testimony before the House Ad Hoc Committee on the Handicapped, chaired by Congressman Hugh Carey, the Handicapped Child Benefit and Education Bill was introduced. The contents of this bill were added as amendments to the 1966 Elementary and Secondary Education Act. In it was included a new Bureau of Education for the Handicapped in the Office of Education, with a statutory National Advisory Committee required to make an annual report to Congress and to the people of the United States.

To assure efficient, economic, and effective Federal promotion of education for handicapped children an identifiable administrative unit reporting directly to the U.S. Commissioner of Education was established in 1967. The maintenance of such a tie remains of considerable interest to local, State, and regional administrators, to professional and parent organizations, and to the large number of relatives and friends of handicapped people throughout the country.

Soon after the Bureau of Education for the Handicapped was formed, additional legislation earmarked set-asides in ESEA title I

(P.L. 89-313), ESEA title III, and the Vocational Education Act for the handicapped. These programs are administered jointly by EHH and other bureaus within the Office of Education.

A series of additional authorities and amendments directed towards developing a comprehensive program for the handicapped have been enacted. Deaf-Blind Centers, Handicapped Children's Early Education Assistance, Specific Learning Disabilities Centers, and other modifications have been able to extend the depth of the programs.

In January 1967, when the Bureau became an operational administrative unit of the Office of Education, the interests of the handicapped were placed in the central decisionmaking process of the Office of Education. This single act brought together all programs that were concerned with this special target population and brought to bear the energies of the Federal Government to assure an equal opportunity for all handicapped children.

In 1969, in response to President Nixon's call for coordinated and consolidated programs, the various legislative authorities for the education of the handicapped were restructured into a new law (P.L. 91-230), the Education of the Handicapped Act. This is the basic authority for the programs for the handicapped and the Bureau of Education for the Handicapped.

Concurrently, efforts are being made to revise some of the traditional discrete disability categories which have limited service: 1) more direct focus on the educational needs of severely or multiply handicapped children; 2) specific programs to return children, unnecessarily labeled and academically underestimated, to the mainstream of education; 3) more rigorous and earlier educational assessment of children with developmental problems and aberrations; 4) educational intervention to promote effective learning in vulnerable infants and very young children without reference to a specific disability.

Table 1 shows the growth of funding from 1961 to 1971. In addition to these monies, the set-aside funds in ESEA title I and title III, plus the Vocational Education Act, account for another 115 to 120 million dollars annually.

In April 1971 U.S. Commissioner of Education Sidney P. Marland, in a filmed presentation before the national meeting of the Council

Table I

Year	Budget Estimate Congress	House Allotment	Senate Allotment	Appropriation
1964	\$ 17,484,000	\$ 15,384,000	\$ 15,384,000	\$ 15,384,000
1965	17,484,000	17,484,000	17,484,000	17,484,000
1966	28,300,000	28,300,000	28,300,000	28,300,000
1967	37,875,000	37,875,000	37,875,000	37,875,000
1968	53,400,000	53,400,000	53,400,000	53,400,000
1969	84,550,000	78,850,000	78,850,000	78,850,000
1970	85,850,000	100,000,000	105,000,000	84,575,000
1971	94,450,000	104,400,000	104,400,000	104,400,000
1972	104,250,000	109,250,000	110,750,000	110,000,000
1973	131,919,000	143,519,000	181,769,000	143,519,000
1974	* 94,609,000			

\*Part B funds \$7.5 million are proposed to be transferred to Special Education revenue sharing; these amounts for 1964 through 1973 reflect comparability with the 1974 estimate

of Exceptional Children in Miami, Fla., called for a new national priority for education of all handicapped children by 1980. This firmed presentation was distributed to all State departments of education and used on local and national television programs. Soon after this call for action by the Commissioner, the Education Commission of the States, composed of governors, State legislators, and State and local administrators, adopted education of the handicapped as one of its major priorities for the seventies. Many governors have mentioned the education of the handicapped as a State priority for their state of the State messages. Recently such States as Missouri, New Jersey, and Pennsylvania have allocated revenue sharing funds dispersed to the States in December of 1972 to programs for the handicapped.

It is important at this time to restate the challenge and charge given by Commissioner Marland in the spring of 1971. The Commissioner called for a renewed mutual effort by the States and Federal Government to assure

- That every handicapped child is receiving an appropriately designed education by 1980 (85 percent by 1978)

- That by the year 1977, every handicapped child who leaves school has had career educational training that is relevant to the job market, meaningful to his career aspirations, and realistic to his fullest potential.

- The enrollment by 1978 of 850,000 (85 percent) preschool-age handicapped children in Federal, State, and local educational day care

- That all handicapped children served in the schools have sufficient trained personnel who are competent in the skills required to aid the child in reaching his full potential.

- The most severely handicapped children and youth to become as independent as possible, thereby reducing their requirements for institutional care and providing opportunity for self-development.

## PRIORITY RECOMMENDATIONS

1 WE REAFFIRM THE RIGHT UNDER THE U.S. CONSTITUTION OF ALL HANDICAPPED CHILDREN TO A TAX-SUPPORTED AND APPROPRIATE EDUCATION REGARDLESS OF THEIR PHYSICAL OR MENTAL CAPABILITIES.

2 WE RECOMMEND MAINTENANCE AND STRENGTHENING OF A POPULATION-TARGETED ADMINISTRATION UNIT WHICH COORDINATES PROGRAMS FOR THE HANDICAPPED AT THE FEDERAL LEVEL AND CARRIES OUT ALL FEDERAL PROGRAMS AND PROJECTS FOR THE EDUCATION OF THE HANDICAPPED, INCLUDING SERVICE, PERSONNEL PREPARATION, RESEARCH, AND TECHNOLOGY EFFECTIVE FEDERAL FISCAL CONTRIBUTION IS ESSENTIAL TO IMPLEMENTATION OF EDUCATION PROGRAMS FOR ALL HANDICAPPED CHILDREN.

3 WE RECOMMEND THAT FEDERAL ASSISTANCE TO THE STATES FOR EDUCATION OF THE HANDICAPPED BE CLEARLY IDENTIFIED AND EARMARKED FOR THIS PURPOSE

4 WE RECOMMEND THE FOLLOWING ITEMS BE INCLUDED IN ANY LONG-TERM IMPLEMENTATION OF THE GOALS OF EDUCATION OF THE HANDICAPPED:

- A All children in America are entitled to an equal educational opportunity which is appropriate to his or her level of ability.
- B Every State should develop the details and procedures of a plan of education for all handicapped persons.

- C Procedures for testing, assessment, identification, and periodic reports of progress shall be free of racial, cultural, sex, or other discriminatory practices. Frequent assessments of all handicapped children shall confirm the appropriateness of such programs.
- D Regular educational environments, i.e., neighborhood schools, hospital schools, special schools and classes, and intensive education/care units shall be made available for placement of handicapped children.
- E Families, guardians, handicapped youth and adults, as well as other citizens from the community at large, should participate as an integral part of the planning and operation of these programs.
- F When there are differences among the various parties, i.e., parents, handicapped people and school authorities, due process procedure should be available to assure that an equal educational opportunity is available for all handicapped children.
- G For all Federal funds intended for basic educational programs for the handicapped the State education agency shall be the sole recipient and be administered by its special education unit. In addition, approved special projects and demonstrations may be awarded directly to State education agencies, local education agencies, private agencies, and colleges and universities. Federal funds administered by the SEA must arrange to extend the benefits of such funds to handicapped children attending private schools.

5 WE COMMEND THE BUREAU OF EDUCATION FOR THE HANDICAPPED FOR INSISTING UPON QUALITY CONTROL OF ALL PROGRAMS FUNDED BY USOE FOR THE HANDICAPPED AND RECOMMEND THAT THEY EXERCISE CONTINUED LEADERSHIP IN THE ASSESSMENT OF PERFORMANCE OF SUCH PROGRAMS

6 WE RECOMMEND THE IMMEDIATE EXTENSION OF THE EDUCATION OF THE HANDICAPPED ACT (P.L. 91-230) AND CONSIDER IT ESSENTIAL TO CONTINUA-

TION OF FULL SERVICES TO ALL HANDICAPPED CHILDREN

7 THE NATIONAL ADVISORY COMMITTEE ON HANDICAPPED CHILDREN CALLS FOR A WHITE HOUSE CONFERENCE ON THE HANDICAPPED NOT LATER THAN 1976 SO THAT NO HANDICAPPED CHILD SHALL REMAIN FORGOTTEN OR NEGLECTED AS THIS NATION MOVES INTO ITS THIRD CENTURY OF PROGRESS AND HOPE FOR ALL PEOPLE

#### REVIEW OF ACTIVITIES AND PROGRAMS OF THE EDUCATION OF THE HANDICAPPED ACT P.L. 91-230

At the beginning of fiscal year 1973 the National Advisory Committee on Handicapped Children had a membership of 14 people. Dr. Robert M. N. Crosby was appointed chairman by the Secretary of Health, Education, and Welfare. In November of 1972 Dr. Frank B. Withrow was appointed executive secretary and support staff was assigned to work with the Committee. Mrs. Catherine C. Purnell and Mrs. Linda Kinney are staff assistants and Mrs. Dorothy Proctor is the secretary.

Four regular meetings of the committee were held during fiscal year 1973, on August 3-5, 1972; November 13-15, 1972; February 1-3, 1973; and June 6-7, 1973. Also, the National Advisory Committee has provided a forum for parents, professionals, and other interested citizens in which they might interact with committee members at a series of national conventions concerned with the handicapped.

This report will endeavor to touch upon the New Federalism that President Nixon is establishing in his second administration. A brief history of the evolution of Federal programs for the handicapped will be included as background for this New Federalism. Since 1967, the programs for the handicapped have been moving towards more accountability, reduction

of dependency for handicapped people, and institutional reform.

#### Highlights of Fiscal Year 1973

The efficiency and effectiveness of the program planning, policy staff, and the implementation by the Bureau of Education for the Handicapped of these procedures is a reflection of the seriousness with which the staff regards long-range planning. The intensive efforts of the planning staff have enabled the Bureau to work effectively across agencies within the Department of Health, Education, and Welfare.

These planning activities have also been extended to mutual plans between the Bureau and State education agencies. The Aid to States Branch has, during the past 4 years, provided technical assistance to States so that all activities for the handicapped will be interlocked and child centered. The main objective of this activity in 1973 is the development of procedures for third-party evaluations of projects and programs funded within the States. Such interaction among States and the Bureau encourage development of plans that are mutually evolved and activated. The goal of such technical assist-

ment is a person on the roads of freedom, equipped and regardless of his location within a State, in the care of teachers who assist to remove the barriers to his learning. Since this approach brings together mutually needed resources and substitutes in a community a factor rather than a barrier to effort. A more effective way to reduce the dependence on the part of the handicapped on state resources is to regularize education programs when that is possible.

### Professional Preparation

The Bureau adopted a new procedure for funding the development of professional personnel. It provides for greater flexibility on the part of colleges and universities in strengthening their special education departments, increasing the numbers of students preparing to work with handicapped children, and advancing existing staff participation in professional preparation and upgrading of skills. It also requires an evaluation of the effectiveness of the training which includes a follow-up on graduates of such programs. The new funding formula encourages the retaining of surplus regular teachers and the recruitment of outstanding young people to work with the handicapped.

Unlike general education, education of the handicapped still has an immense manpower need. A recent study of this need indicates that there is still a shortage of more than 200,000 teachers. It also assumes that existing patterns of intervention will remain stable. Other efforts between the training and research divisions may discover new means of intervention that call for a different use of manpower which would modify the numbers and kinds of professionals required.

### Telecommunications

A special note of interest in the educational technology area was the captioning of President Nixon's inaugural address for the deaf. For some years the Bureau has been working to provide captioning of the news at the time it is broadcast. This is the first example of such a program. Additional efforts are being made with the Public Broadcasting Service and WGBH of Boston to provide as much as 1500 minutes of captioned television for the deaf this season.

The use of television for other areas of handicapped children is also beginning to appear. The Federal Communication Commission has informed all broadcast facilities that they must include coverage for all elements of the society. Public stations are especially required to serve the needs of the society with respect to minority groups. In a memorandum to all broadcasters the FCC pointed out that handicapped people are a minority group and as such should have special programs designed for, about, and by them.

The inclusion of handicapped people as a part of a normal story line in general television programming this season has been more accurate and in greater quantity. "Sesame Street," "Mr. Rogers' Neighborhood," and "Zoom" are all programs that have had handicapped people as a part of their regular show.

What Shall We Do For Thursday's Child? was a special 90-minute program on the rights of the handicapped child to an equal education. This program originated in Philadelphia and was transmitted to all 232 Public Broadcast Service stations across the Nation. All of the major cities rebroadcast the show and many cities added local programming that called attention to the issues concerning education of the handicapped in their community.



## BUREAU OF EDUCATION FOR THE HANDICAPPED

Under Public Law 91-230 the Bureau of Education for the Handicapped is charged with the administration of a part of the Education of All Handicapped Act. It is also required to coordinate activities with other agencies when the education of handicapped children is involved. Coordination with other agencies specifically involves ESEA title I (P.L. 89-313), ESEA title III, the Vocational Education Act of 1968, Head Start, and Child Advocacy programs. This report will summarize the main points of interest under each part of the Education of the Handicapped Act.

**Part B, Aid to State Education Agencies**

During recent years Part B has funded about 2,000 projects which provided part of the educational service for 300,000 handicapped children annually at a cost of \$37,500,000 per year. State and local resources continued 500 or more of these projects which were initiated by Federal funds each year. In a substantial number of programs there is an immediate expansion of the activities as they are replicated throughout the State. Excellent ideas and programs are frequently transported across State lines and duplicated in adjacent States.

This program not only serves as a catalyst for demonstration projects but brings together many different agencies and professional disciplines within States to coordinate local, State, and Federal fiscal resources to serve handicapped children. Frequently this cooperative effort was the first time that such inter- and intra-agency communication and coordination has occurred. Since the inception of the program in 1967, State education agency leadership staffs in special education have tripled in number. In some States no personnel were assigned to this area of education prior to 1967 and consequently almost no programs were offered for handicapped children. In the school year 1964-65 there were 180 special education specialists employed in SEA's and in 1972-73, 371 specialists were employed. These enlarged and better trained staffs have undertaken comprehen-

sive long-range planning efforts directed towards full service programs. State advisory committees have been formed in almost every State to assist with this planning. These committees include experts from local schools, colleges, and universities, vocational education, vocational rehabilitation, health agencies, and residential schools. The Bureau requires that there be a sharing of plans with the public and that there exist a range of services from residential schools to integration of handicapped children into regular education programs in the local school system.

A better understanding of the effect of this act can be seen in table II, which breaks out children served and money expended by handicap.

Table II  
FUNDS EXPENDED BY TYPE OF HANDICAPPED CHILDREN AND NUMBER OF CHILDREN SERVED UNDER PART B, EHA, P.L. 91-230, TITLE III, ESEA, AND THE VOCATIONAL EDUCATION ACT  
FISCAL YEAR 1971

Type of Handicap	Funds Expended	Number of Children Served
Trainable Mentally Retarded	\$ 7,050,007	122,760
Feeble Mentally Retarded	44,435,853	324,777
Learning Disabled	10,210,496	78,442
Emotionally Disturbed	14,467,346	84,439
Other Health Impaired	5,704,420	23,004
Crippled	1,237,589	23,409
Visually Impaired	5,204,166	30,302
Deaf	10,379,537	38,577
Hard of Hearing	6,167,349	46,227
Speech Impaired	5,515,577	167,501
<b>TOTAL</b>	<b>\$132,472,320</b>	<b>919,438</b>

Table III indicates the distribution of activities on which funds were expended. As indicated in this table, more than 70 percent of the funds go directly into instructional activities for children.

Table III  
FUNDS EXPENDED BY TYPE OF EXPENDITURE  
UNDER PART B EHA TITLE III  
FISCAL YEAR 1971

Type of Expenditure	Amount Expended	Percent Expenditure
Instruction	\$57,120,880	71.8
Administration	1,078,176	8.6
Fixed Charges	1,102,179	5.5
Equipment for Instruction	1,018,018	5.0
Pupil Transportation	1,486,076	1.9
Health Services	1,000,667	1.3
All Other Equipment	247,000	1.2
Student Body Activities	713,817	.9
Operation of Plant	524,019	.6
Maintenance of Plant	666,649	.5
Community Services	401,038	.5
Food Services	412,779	.5
Remodeling	320,519	.4
Buildings	194,260	.2
Attendant Services	779,427	.1
<b>TOTAL</b>	<b>\$80,129,772</b>	<b>100</b>

Part B of the Education of the Handicapped Act is the focal point for planning and coordination of activities for all Federal, State, and local programs. In fiscal year 1971, 180,000 handicapped children received some benefits from ESEA title III and 209,000 were a part of the Vocational Education Acts program. A considerable amount of BEH staff time was spent in coordinating these efforts for the handicapped at the Federal, State, and local levels. Since 1971, 85 percent of ESEA title III has been administered at the State level through DHEW regional offices. All of Vocational Education is administered through the regional offices.

Coordination with the Bureau of Adult, Vocational, and Technical Education has been very active this year. Clarification of guidelines and the definition of the handicapped were emphasized in workshops. Some States appointed personnel who jointly worked in the Vocational Education Department and the Special Education Division. A nationwide effort was made to encourage the inclusion of the more severely handicapped student in these programs. Efforts are being made to assure that all States can identify by name the handicapped student and service he receives. In many States a mutual plan is being developed among special education, vocational rehabilitation, and vocational education so that duplication of effort is minimized.

Three national conferences were developed in career education. The largest was a joint conference in New Orleans in February, 1973, sponsored by the Council for Exceptional Children and the American Vocational Education Association. Some 1200 professionals from both areas of expertise attended this conference. Also in New Orleans, a conference on career education for the blind was held. A symposium on career education for the deaf was sponsored by the University of Nebraska's Regional Media Center for the Deaf.

The strongest overall coordination activity which the Bureau has been able to use is the Projected Activity Report required under Part B of this Act. This requires all States to be at least aware of what is happening in each of these areas.

#### Part C. Centers and Services for Deaf/Blind Children

There are 19 regional deaf blind centers serving children throughout the 50 States and other areas. These centers subcontract with more than 100 local resources to provide diagnostic, counseling, and educational services to deaf blind children and their families. It is now estimated that there are about 5,000 deaf blind children in the United States. Slightly less than one-third of these children received full-time educational services this year. Almost 400 deaf blind children attended day programs within their local community. Almost 1,000 children received service in residential schools. Additional work is done on a short term basis of emergency care for children and their families as they waited for full-time service.

The Committee noted that much improvement has taken place over the past year, but that there are still many of these children lost in the back wards of hospitals or sitting at home without any education being offered them. These children are the results of the rubella epidemic of 1961-65 and are now 8, 9, and 10 years old. Time is rapidly running out for them to be a part of the human race. Every effort must be made to continue to search for these children and to provide an education for them.

#### Part C. Early Childhood Education Centers

The Federal Model Early Childhood Education Centers have stimulated the growth of

similar programs so that an estimated 100,000 handicapped children received some early education this year. This is compared to a handful of early experimental programs as late as 1965 which served less than 10,000 preschool handicapped children. Almost 100 percent of the projects funded under this part of the Act are eventually continued through the use of State, local, or private funds. For some handicapped children education should begin in infancy. Specific work with both the child and his parents must start early. Where there is a high risk factor known, the parents' work may begin during the pregnancy.

This year the Bureau and the Office of Child Development funded six projects to demonstrate the efficacy of handicapped children being served in Head Start programs. Such programs are helpful to both the handicapped and nonhandicapped child in that they provide a wider range of experiences for each child. This joint effort is in response to the 1972 congressional mandate which requires the Office of Child Development to include handicapped children as a part of the population it serves within Head Start programs. The Committee commends Congress for this mandate.

#### Part D, Professional Preparation

Unlike general education, education of handicapped children has no surplus of professional workers. To meet this continuing need the Bureau has moved to a changed procedure for developing required manpower. The new procedure provides for more freedom and flexibility on the part of the college and university to meet the needs for professional preparation. Stipends are no longer automatically provided as a part of student support. In addition, students are allowed to work as graduate assistants. The net effect of these changes is to increase the strength of the special education department within the college or university, allow for new and nontraditional models of training to be developed, attract a larger number of students into this field, and encourage colleges and universities to plan cooperatively their programs in conjunction with State education agencies and local communities.

The new procedure requires a greater degree of accountability on the part of the college or

university. Each program develops a system to evaluate the effects of its training and follow students through to their eventual employment within programs for the handicapped.

A relatively new aspect is the training of physical educators and recreational personnel. Three years ago almost no training of such personnel included work with the handicapped. Today 226 students are enrolled in 32 colleges and universities and are being trained specifically to work in this area. Additional short-term workshops are providing inservice training to staff already employed in programs for the handicapped. Year-round activities in physical education and recreation for the handicapped are becoming part of the regular opportunities offered in many programs for the handicapped.

The Committee is most encouraged with the new procedures established in the development of manpower needs and commends the Bureau for the action it has taken in this area.

#### Part E, Research and Demonstration

The Committee is aware of the development of the National Institute of Education and its efforts in research; however, *IT STRONGLY RECOMMENDS THAT THE PART E PROGRAM OF RESEARCH UNDER THE EDUCATION OF THE HANDICAPPED ACT CONTINUE TO BE ADMINISTERED IN THE BUREAU.* The Committee feels that the concentrated effort on the targeted population of the handicapped has allowed for a rapid and orderly transfer of knowledge into action.

The current year's activities have been designed around the priorities set down by the Bureau. Major efforts are being made to validate the cost effectiveness of educational interventions and to test new educational procedures used within the field.

Project PRIME is a joint endeavor of BEH and the Texas Education Agency designed to investigate what factors make a difference in the social, emotional, and academic growth of exceptional children.

Briefly stated, the problem to which this research is directed is generic to the entire field of special education. There is considerable evidence to suggest an ongoing impetus on the part of State education agencies toward re-evaluat-

ing the appropriateness of special class placement for handicapped children. An examination of the Projected Activities Report submitted by each state education agency to the Bureau of Education for the Handicapped for the fiscal year 1973, related to EHA, Part B and P.L. 89-313, reveals that over 50 percent of the States' listed activities related to integration of handicapped children into mainstream education as a major problem and objective. There is every reason to believe that special education is reexamining its reliance upon self-contained special classes (particularly for the EMR, ED and LD child) and moving toward increased reintegration in the regular classes. If, as Hanushek (1970) suggests, based on analysis of Coleman's (1966) data, schools appear to be expending funds on the wrong things, it would seem imperative that special education be concerned with identification of the factors that make a difference for handicapped children. Therefore every effort should be made to identify the relevant pedagogical variables which maximize the successful adjustment and growth of handicapped children in regular classes. There appears to be an urgent need for: a) a description of those variables (i.e., input and process) which appear most relevant to the prediction of successful outcomes; b) the development of specific intervention programs delivered to regular classrooms or related sociological systems (i.e., peers, family, etc.) which have potential for maximizing successful outcomes; c) the experimental validation, through methodologically sound design, of promising intervention packages; and d) the evaluation of those variables within intervention packages which account for their success. The inauguration of the new Texas legislation and its obvious national implications have provided a unique opportunity to pursue these problems. This project will attempt to answer some of these questions.

Within the Bureau this project in research was stimulated by the close interaction between service and research programs. Such interactions among research, training, services, and technology clearly enables the national research effort to be directed towards removing barriers to full services for all handicapped children. This close interaction allows new knowledge to be transferred into action at optimum speed.

#### Part F, Media Services and Captioned Films

The most significant activity of the current year was the awarding, through a highly competitive process, of the National Center on Educational Media and Materials for the Handicapped to Ohio State University in Columbus, Ohio. The first year of this award is developmental in nature and designed to allow for staffing and operational organization of the center. The Committee wishes to commend the center for its recruitment policy in seeking qualified women, minority groups, and handicapped professionals to staff its programs.

When fully operational, the center will be a capstone to the learning resources systems funded by the Bureau. It should interact with the Special Education Instructional Material Centers, Regional Media Centers, Regional Resource Centers, and other educational technology efforts to assure that there is a common exchange of information on techniques and materials used by the handicapped.

As noted under "Telecommunications," Captioned Films for the Deaf has expanded its television efforts this year. Television is a cost effective means of bringing a wider range of educational and cultural programs to the deaf. There are two systems of captioning television which are currently being explored. One system broadcasts so that all television receivers will receive the captioned version of the program over open broadcast systems. The other system requires a special attachment on the home television set to receive the captioned program. In this latter system only those sets with the special attachments will be able to receive the subtitled programs, while all others will receive the program as it is normally broadcast. This system is being developed through a joint effort among the Bureau of Education for the Handicapped, Public Broadcasting Service, and the National Bureau of Standards. In addition to these conventional broadcast methods of providing captioned television to deaf audiences, exploration is being made with respect to the use of cable television for the deaf.

Educational technology programs are expanding in all areas of Media Services and Captioned Films activities. Through close cooperation with the major television programs for children, handicapped children are beginning to be included as a target group in their programs. For example a deaf girl, Linda Bove,

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an actress with the National Theatre for the Deaf, lives on "Sesame Street." Scheduled for this season are some orthopedically handicapped children who will appear in wheel chairs on "Sesame Street." "Zoom" has had blind children appearing as guest experts on the show. "Vision On," a program developed specifically for deaf children or language-handicapped children, has been brought to this country.

"Mr. Rogers' Neighborhood" is emphasizing the handicapped child as a target population for this season. In this program, efforts are made to develop sensitivity in young viewers to the differences among people.

#### Part G, Learning Disabilities Centers

In this program the Bureau of Education for the Handicapped has sought to establish state-wide models of programs for teaching disabled children. Seventeen additional grants were awarded this year to make a total of 10 States that have received grants for this purpose. In some of the grantee States new laws have been passed that establish specific learning disabilities as a part of the laws concerning the handicapped. In such States this usually means that professionals are hired within State departments of education who can provide leadership to the State in developing guidelines and services for these children. All of the grants in this category require that provisions be made to extend the program beyond the demonstration stage.

Most of the grants are concerned with elementary-age children, however, some States

such as Ohio have designed programs at the secondary level. These projects provide individualized assistance which allows a pupil to have the support required to achieve in either an academic or vocational program.

A Leadership Training Institute has been established at the University of Arizona. This grant provides technical assistance to all of the current grantees and to potential grantees. It is the central focus of this national program and as such brings together manpower resources from a multi-disciplined background to give direction so that duplication of effort is held to a minimum and new knowledge is rapidly assimilated by the schools and professionals serving these children.

#### Grants Awarded in 1971

California	New Jersey	Washington
Colorado	Ohio	Wisconsin
Mississippi	Utah	Arizona (University of)

#### Grants Awarded in 1972

Alaska	Michigan	Rhode Island
Arizona	Nebraska	Texas
Georgia	New Mexico	Virginia
Iowa	Pennsylvania	West Virginia
Kansas	Puerto Rico	Wyoming

#### New Grants (LD) tentatively scheduled to begin July 1973, as funds become available:

Idaho	BIA (Bureau of Indian Affairs)	South Carolina
Nevada		Maryland
Oregon	Massachusetts	North Carolina
Arkansas	North Dakota	New York
Delaware	Alabama	Oklahoma
Louisiana	Kentucky	Maine
Florida	South Dakota	Missouri
	Connecticut	

## ISSUES AND RECOMMENDATION FOR THE FUTURE FOR EDUCATION OF THE HANDICAPPED

The Committee is deeply concerned with the expiration of Public Law 91-230 on the thirtieth of June 1973. Failure to extend this legislation would jeopardize all the accomplishments on behalf of the handicapped children that have been made in the past years (see appendix B, letter to the Commissioner of Education). The Bureau of Education for the Handicapped was formed to plan for this neglected target population. This is economically, administratively, and procedurally sound. The continuation of an organization with a strong, broad, Federal focus, with policy access at the highest levels of DHEW, is essential to insure continuation of the many services to the handicapped provided during the last 4 years.

### **New Legislation**

In the second Nixon Administration it is likely that new legislation in the area of the education of the handicapped will be enacted and financial support appropriated. In developing such legislation there are a number of factors which should be included:

#### **1. Rights of the Handicapped**

Each handicapped child must be guaranteed the right to a tax-supported appropriate education. This education must be of high quality and must fit the needs and abilities of each child, no matter the degree of handicap.

#### **2. State Plan**

There must be a State plan which documents the procedures for insuring that such tax-supported appropriate education will be available by a specified date. It should include a timetable for accomplishing education for all handicapped children and acquiring the necessary facilities, personnel, and services. In addition, each State must make an effort to find all handicapped children within its boundaries. The guarantee of an appropriate education is of no value if it is not carried to its fullest extent. All handicapped children residing within a State must be identified and the procedure for entering the system must be made clear and available to parents.

#### **3. Plan for Each Child and Due Process**

The State, through the local education agency, should have a plan developed for each child which has been agreed upon by the parents or guardians of the child. This statement should include the level of educational performance at the time of entry, a statement of long-range goals for the education of the child and the method by which these goals are to be obtained, as well as a statement of the specific services which will be provided, including the dates of initiation and anticipated duration of these services. This program should be reviewed at least annually and amended when necessary with the approval and agreement of the parents or guardian of the child. Due process procedures must be available which will allow notification of parents or guardian of the child when the education agency proposes to change the plan or placement of the child. There must be an opportunity for the parents or guardian to obtain a fair and impartial hearing, to examine all records with respect to classification or placement of the child, and to obtain an independent evaluation of the child, if desired.

#### **4. Nondiscriminatory Testing**

All tests or other evaluation procedures used for the purpose of classification or determining the level of a child's educational performance must be neither racially, culturally, sexually, or otherwise discriminatory.

#### **5. Assessment of Performance**

The child's performance in such an educational plan must be assessed at frequent intervals in order to assure the effectiveness of the program in meeting the needs of the handicapped child.

#### **6. Range of Program**

There must be a diversity of alternative program placement. This includes all ranges of educational intervention from neighborhood schools, hospital schools, and special class placement, to homebound and intensive educational care units.

### 7 *Citizen Participation*

Citizen participation, whether it be on the part of a parent of a handicapped child or on the part of a handicapped adult, in program planning and operation must be an integral part of all State and local educational organizations

### 8 *Administration and Supervision*

The State education agency shall be the recipient of Federal funds designated for the direct education of the handicapped children. This agency will be responsible for administering and/or supervising the preparation and administration of the State plan. All educational programs for handicapped children within the State will be supervised by the persons responsible for educational programs for handicapped children within the State education agency. All educational programs for handicapped children within the State shall meet the educational standards of the State education agency. Procedures for extending direct educational services to handicapped children attending private schools shall be developed.

### **Accountability**

There is increasing insistence on accountability—financial, as well as programmatic. This is to be commended. The Bureau and field have always taken a very positive stand on the evaluation of funded programs and should be commended for this, as well as encouraged to continue leadership in the assessment of performance of programs at Federal, State, and local levels. Such emphasis on accountability, however, should not interfere with the advancement of programs for the handicapped. The apparent collision between advocacy and accountability should be prevented. A group needing service should not threaten those who are already in the system receiving service. We cannot discontinue our present programs, nor can we fail to include in them the approximately four million handicapped children not being served, until such time as specific and detailed evaluation of programs can be made. Evaluation can be, and should be, an ongoing process that leads to the expansion of services to all handicapped children in the United States.

On the other hand, the expansion of services to encompass all those not now being served

should not replace the effort to improve the programs already in existence. A program goal should be established for each child, and some measure of accomplishment of this goal should be documented at regular intervals at the local level and monitored by the State. Only by combining advocacy and accountability will we insure that all handicapped children are placed in an educational program with the assurance that there will be a high quality of education appropriate to the child's ability.

Fiscal as well as programmatic accountability shall be the responsibility of both local and State education agencies. Methods of insuring accountability of both varieties shall be an integral part of the State plan for the education of the handicapped child. Documentation of performance in the areas of finance and program shall be made by report at frequent intervals to the designated Federal organization responsible for management and administration of programs for the handicapped.

### **Financing**

There is an enlarged need for Federal funds devoted to the education of handicapped children. This need arises for several reasons: (1) increased numbers of children are coming under special educational responsibilities, (2) legal actions and legislation in the States have mandated education for all children, and (3) available resources are restricted by judicial regulation of tax revenues derived from property taxation for the purposes of education. In addition, the expansion of other services outside the education area in every State is placing greater burdens on the financial resources of local governments. These limitations restrict total income so that we find an increasing gap between need and provision of services in education of the handicapped. The education of the handicapped child should in this cost-resource squeeze be given special consideration because it is the most vulnerable service provided by the State. When seeking a method of reducing a State budget, services offered to handicapped children are frequently the first to suffer. In many localities, special educational programs are already feeling the cost squeeze which has become almost endemic to our urban areas.

That it is in the national interest to prevent

lateration of education of the handicapped is to determine the later impact of these failures on education upon the community. The 1968 Report of the National Advisory Commission on Civil Disorders implicates the failure of special education as a significant origin of serious community disruption.

In addition to the great financial need of various communities which arises from a limited income and tax base as well as an increasing need for services, there is the additional disproportionate need between one community and another. Where facilities are adequate for education of the handicapped, there is migration of families to that area. This then places an undue burden upon certain localities. The migration of families from one State to another to gain special educational opportunities has become an accepted fact of life. It places an unfair burden on some communities, penalizing them for providing proper education for the handicapped, while rewarding other communities which are unwilling to assume their responsibilities. Thus the education of handicapped children must be treated as a Federal problem over and above the ordinary educational responsibilities of the States. Federal funds must be provided.

Previously, the Federal Government has given special education financing to State programs, but not as a permanent subsidy. The cost of education of the handicapped must be shared by the Federal Government on a permanent basis, rather than a temporary one. There are many collective national priorities, such as defense, environmental protection, and cancer research. There is now a necessity for Federal support of special education from the standpoint of State fiscal incapability as well as the disastrous later impact on communities if programs for the handicapped fail.

There is an historical precedent for the entry of the Federal Government into permanent funding. Washington assumed the responsibility for the education and financing of the deaf band one group of handicapped children. It now becomes necessary to expand this scope and include all handicapped children under this national priority.

Whatever method this financing makes use of is not particularly relevant to this Committee's activity. Such funding, whether it be in an outright payment to States or through the vehicle of revenue sharing, must be categorized

specifically for the education of the handicapped. There must be limited flexibility in this identification in order that the target population may be adequately served. It is also essential that a percentile formula for measuring the share to be received for education of the handicapped not be used, but that specific dollar amounts be appropriated. The percentile method fixes for all time the relative position of all subgroups and an increase to one group cannot be made except at the expense of other groups.

### Continuing Problems

1. Failure to provide educational services for handicapped children will result in an increasing battle within the courts. Class-action suits are currently pending in 21 different States. Equitable procedures and programs must evolve through the educational institutions. The final responsibility is with the educators to implement such programs.

2. The efficient use of existing professional personnel mandates that cooperative planning among local, State, Federal, and private agencies and colleges and universities must be more sharply defined than in the past. The Bureau has made a beginning towards long-range planning but the overall picture still remains fragmented.

3. Financing of general education is undergoing a major revolution in this Nation. Education of the handicapped must develop techniques for maintaining parity in such a shifting situation. The economics of scale factor is a major problem. Who will pay for and administer programs for low-incidence populations of handicapped children?

4. Coordination among disciplines that are concerned with the handicapped has improved, however, education, medical, social rehabilitation, and welfare agencies still function as separate and sometimes disparate institutions.

5. Institutional reform has begun, however, education of the handicapped remains one of the most labor-intense activities in education. New knowledge and new techniques must constantly be explored if efficiency is to be increased and education is to move into the electronic age. Cost reductions will be possible only when the intensity of the use of highly





trained professionals is reduced. New roles for professionals and paraprofessionals must be developed.

6. Communication of new knowledge and techniques so that they become an active part of the local school system is still a major problem. It requires new and bold approaches to bring to more than 135,000 practicing special educators the findings of research and demonstration projects. More than 60 percent of the employed staff do not meet the minimum State certification requirements.

7. Prevention of complicating factors can be reduced by early infant and child education programs. Major new shifts in community responsibility and in some instances State laws must be changed if these programs are to become universally available to all handicapped children and their families.

8. Major reforms in professional preparation programs must be enacted to respond to court decisions that demand immediate action. The handicapped child is now the responsibility not only of the special educator, but also of the general educator. All teacher preparation must include techniques for working with the handicapped child.

9. Career education is not yet a fact for every handicapped youth. Programs must be established that enable every handicapped youth to be prepared to enter the world of work. Continuing education programs need to be developed that allow handicapped people to expand their work skills and potential abilities throughout their lives.

10. Major commitments of resources must become a part of local, State, and Federal agencies responsible for administration of education programs for the handicapped. Shortages of required staff to operate, administer, and plan such programs are not commensurate with funds allocated nor the programmatic charge given to such administrative units. This shortage continues to plague these new organizational units in all programs and at all levels. This lack of sufficient quantity and quality of staff is in the long run wasteful of both human and financial resources.

11. Programmatic specialist, economic specialist, legislative specialist, and administrative specialist must develop a decisionmaking process that is child centered and cost efficient both in terms of short-term gains and long-range effects upon local, State, and Federal resources.

## APPENDIX A



DEPARTMENT OF HEALTH EDUCATION AND WELFARE  
OFFICE OF EDUCATION  
WASHINGTON D.C. 20202

February 21, 1973

Dr. Robert M. N. Crosby  
Chairman  
National Advisory Committee  
on Handicapped Children  
Office of Education  
Washington, D.C. 20202

Dear Dr. Crosby:

Thank you for your letter of February 5 on behalf of the National Advisory Committee on Handicapped Children concerning the expiration of the Education for the Handicapped Act.

I am in accord with the Council's assessment of the importance of the education of handicapped children. I can assure the Council that every effort is being made by the Administration to insure timely action on legislation relating to the education of handicapped children.

President Nixon's budget already reflects the decision to continue the Federal commitment to the education of handicapped children in Fiscal Year 1974. The funds will be made available through legislation to be proposed which will authorize continuation of the activities currently authorized under the discretionary parts of the Education of the Handicapped Act and the inclusion of State grant funds in the Education Revenue Sharing proposal. P.L. 89-313 funds (now included section 103 of Title I ESEA) will also be included in the ERS Area of Assistance for the Handicapped.

The details of the Administration's legislative proposals for education are now being finalized and will be submitted in time to permit Congressional deliberations before July 1, 1973. Once the proposals are submitted, of course, it will be the Congress which will determine the schedule for consideration.

Sincerely,

John Ottina  
Acting U.S. Commissioner  
of Education

## APPENDIX B

R. M. N. CROSBY, M. D.  
1010 ST. PAUL STREET  
BALTIMORE, MARYLAND 21202

VERNON 7-0404

PEDIATRIC NEUROSURGERY  
AND NEUROLOGY

February 5, 1973

Dr. John R. Ottina  
Acting Commissioner of Education  
Room 4181-D, FOB 6  
400 Maryland Avenue, S.W.  
Washington, D.C. 20202

Dear Commissioner Ottina:

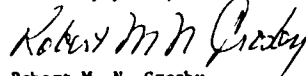
The National Advisory Committee on Handicapped Children is deeply concerned about the future of the USOE programs for the handicapped. We feel that the June, 1973 expiration date for P.L. 91-230, Education for the Handicapped Act, calls for immediate action in order to assure the continued and efficient management of the program for which we have assumed advisory responsibilities.

We are aware of the recent history and current status of the Vocational Rehabilitation Act of 1972 with the pocket veto and the subsequent inability to appropriate the later authorized \$60 million supplemental. It would seem to be urgent that some legislative action be taken on the provisions for the education of the handicapped prior to the regular expiration date in June, 1973 so that a similar circumstance does not occur.

The continued existence of a viable administrative unit in the USOE is particularly critical in light of the strong demands for accountability through greatly increased state legislation and judicial decisions. Anticipated funding problems through lack of a unified fiscal pattern and the contemplated changes as recommended in the 1974 Budget, i.e. the Aid to States makes it necessary to begin discussion of this legislation now. These factors appear to threaten the existence of an identifiable administrative unit with policy access as is now the case with the Bureau of Education for the Handicapped.

The Committee would appreciate information on USOE's plans relative to the introduction of a bill, the holding of hearings, and the implementation of legislation for the renewal of the Education of the Handicapped Act prior to the regular expiration date of P.L. 91-230.

Cordially yours,



Robert M. N. Crosby  
Chairman  
National Advisory Committee  
on Handicapped Children

STATE OF NEW JERSEY,  
DEPARTMENT OF EDUCATION,  
Trenton, N.J., April 9, 1974.

Hon. JOHN BRADEMAS,  
2134 Rayburn House Building,  
Washington, D.C.

DEAR CONGRESSMAN BRADEMAS: On behalf of the National Advisory Committee on the Handicapped I would like to express our thanks and appreciation for your kind invitation to provide testimony on H.R. 70.

I am sorry that we were unable to communicate, with clarity, on the point in the testimony which states "the growing taxpayer resistance to support State programs for the handicapped." I will try to clarify this point in this communication.

It is my view that funding for the handicapped is an integral part of the public support of general education and that we are in a period of major public concern for the quality of education, the cost of education and, as the professional literature indicates, the very necessity of education as we have developed the system. This tension between the public and the educational structure has resulted in teacher unions, pressure for access to public school data, demands for the evaluation of the system (accountability) and serious questions at the state and federal level as to how tax funds are being expended in the local districts of our Nation.

In light of this impact I believe that *funding for the handicapped* suffers *disproportionately*. Programs for the handicapped have always been, and continue to be, considered a "high cost" program. It is noteworthy in this context, that the excess cost for providing special teachers, facilities, and materials for a high school honors computer program or the football team does not have the same psychological effect upon the voting public though these programs may be equally costly on a per pupil basis.

The general public, oftentimes, does not have the opportunity to vote directly on handicapped aid as a separate budgetary issue in local education and/or in the legislature.

A prime example is the funding for institutions for the retarded which, as you know full well, had reached such a tragic state that legal action and federal support was needed, and continues to be needed. In this case I must assume that the lack of State Legislative fiscal support reflects public unawareness or lack of political support.

I have just received the enclosed letter and newspaper article as a prime example of my premise but I can assure you that the budget reductions within the appropriation sessions of most legislatures would reflect similar actions.

I look upon H.R. 70 as a commitment to fulfill the potential for full and equal rights of handicapped children to an education. Its fiscal infusion will undoubtedly ease the task of this goal but I see in its other provisions a growing Federal recognition that leadership, on a National scale, is indeed available to make our hopes a reality.

I would like to again express the Committee's endorsement of H.R. 70 and to personally thank you for your leadership efforts on behalf of the Nation's handicapped individuals.

Sincerely,

DANIEL RINGELHEIM,  
Chairman, National Advisory Committee  
on the Handicapped.

P.S. The cuts being illegal by New Jersey law will undoubtedly be restored.

BOARD OF EDUCATION,  
DEPARTMENT OF SPECIAL SERVICES,  
Paterson, N.J., March 13, 1974.

Dr. DANIEL RINGELHEIM,  
Deputy Assistant Commissioner of Education, Bureau of Special Services, 225  
West State Street, Trenton, N.J.

DEAR DR. RINGELHEIM: As we celebrate the 20th year of the passage of the Bendleton Act, the third largest city in New Jersey has announced a number of violations of Chapter 46 for the 1974-75 school year.

The Paterson Board of Education proposed a budget of 31.4 million dollars. The Board of School Estimate in Paterson reduced the budget by almost 4 million dollars. As a result the Paterson Board of Education stated the following services would be affected:

1 All 8 Speech Correctionists eliminated. No speech correction for Paterson students.

2 All 11 Supplementary Instructors eliminated. No special education for 354 perceptually impaired neurologically impaired and emotionally disturbed.

3 1 Social Worker for 27,000 school children.

4 A reduction of 50% of all students on bedside instructions, including students who are medically or physically ill.

5 A drastic reduction in the out-of-district account affecting the placement of severely emotionally disturbed children, cerebra palsied children and deaf and blind children.

6 We have 5 deaf children scheduled for entrance in September, 1974. An additional class for these children has been eliminated.

I urgently request you to use your good offices to see that these services are restored. It would be a tragedy that in the 20th year of the Beadleston legislation, thousands of unfortunate handicapped children would be denied their rights.

Sincerely,

ARNOLD SACKMARY,

*Director.*

[Apr 14, 1974]

#### A KNOTTY PROBLEM

The decision by the Wayne Board of Education not to appeal to Trenton the \$440,000 ordered cut from its budget by the Township Council was a wise one.

The cut, which represents less than 2½ per cent of the total budget for 1974-75, is not an unreasonable one. The margin of voter defeat of the budget was small, as was the voter turnout itself, in the February referendum. The fact that the board itself only approved the budget by a 5-4 vote does indicate there was some justification for feeling that expenses could have been kept down somewhat.

We applaud the outcome of reasonableness and cooperation indicated in the fact that the board and council have come to an agreement. It is good when a town can resolve its own differences, in response to the citizens' wishes, without having to run to a higher authority—in this case the office of the state commissioner of education—to solve its problems. When the unit of government closest to the people can make its own decisions, the cause of democracy is well served.

Now comes the most difficult time in the process: deciding where to make the actual cuts. A good example of the disputes in store is the expressed difference of opinion among board trustees as to the relative importance of instituting school board funding of high school ski teams, or increasing psychological services. Those who favor funding the citizens ski team have presented a loud plea and a fairly large group of speakers, at times, to ask the funding. Perhaps not so many citizens would turn out to plead for an increase in psychological services. But the board must weigh the relative merits, and make the judgment.

We wish the trustees all wisdom in making their ultimate determinations, for the good of the youngsters whose education it is the board's duty to advance.

Mr. BRADENAS, Thank you very much, Dr. Ringelheim, and I thank, as well, the members on the National Advisory Committee for the Handicapped, for your fine statement.

I was interested in your use of the phrase "the growing taxpayer resistance to support State programs for the handicapped." The Rand report to which I made reference earlier remarks on the great diversity in levels of State assistance for handicapped services of all kinds, as well as levels of State assistance to education of the handicapped.

So my question is twofold: Why is there, if it is true, growing taxpayer resistance; and second, related to the first, why the great disparity in levels of aid?

Mr. RINGELHEIM, In terms of the first question, I think at the present time there is great turmoil as to the value of education in the minds of everybody looking at education--what it produces, what its problems are and that problem which generates the cost.

As to the taxpayer resistance to paying for the handicapped, it is only a reflection of the taxpayer attitude on paying for all of education. School budgets and projects are being dedicated at a rapid pace.

Mr. BRADEMAs. Your State has not been a leader in providing State aid to education at any level; at least that has always been my observation. It has only been in recent years that you have been dragged screaming and kicking into the 20th century. You don't have to answer that.

Mr. RINGELHEIM. Yes, I will answer that. There is an interesting paradox to your statement. As of 1974-75, which is the coming fiscal year, with the appropriation already in the legislature, New Jersey will be one of the highest per-pupil States insofar as expenditure.

The reason it looks rather strange is because New Jersey citizens are a strange lot. They like home rule and pay for their education locally. State aid, this present school year, is around 26 percent; the local aid is 69 percent; Federal aid makes up the difference. We therefore have a State that feels that home rule is very critical within the school district.

In this new legislative package we are increasing State aid to an average of 35 percent, but the cost of education still remains high and we still pay for it primarily at the local level. I as a taxpayer, owning a home, pay a high premium for the desire to have quality education and home rule in my district.

The legislature is, however, under State order to change the ratio between personal property tax and State aid. It is significant to know that 1 week after the *Rodriguez* decision in Texas the New Jersey Supreme Court disagreed with the Federal Supreme Court. In New Jersey we have a fiscal problem and we will solve it: equal fiscal opportunity for all children in New Jersey.

Now I have lost the second question.

Mr. BRADEMAs. How do you describe, as in your statement, "growing taxpayer resistance to support State programs for the handicapped"? First of all, is that indeed the case? Second, I would infer from that statement that more and more Americans want their State legislators to vote against increased State moneys for programs to help handicapped people. That is plain English.

Mr. RINGELHEIM. My statement was meant to indicate that the support of education generally and State support for education of the handicapped, is meeting greater resistance from the taxpayer.

Mr. BRADEMAs. "Why is that?" is my question.

Mr. RINGELHEIM. There is a general feeling that the taxpayer is not getting his dollar's worth. People are raising questions as to the quality of education, the high-cost programs, teachers' salaries, unionism, and a whole set of problems that make the general public wonder what they are getting for their tax dollar.

Mr. BRADEMAs. I am not understanding you. In your testimony you speak of growing taxpayer resistance to State programs for the handicapped. Commonsense would interpret that to say people don't want their legislators to spend more money for handicapped people, no matter what it may be. Your statement has been in terms of growing taxpayer resistance to education generally. It may be related but it is a different point.

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What I am saying is that I take you to be saying people don't want to spend money to help handicapped people if it is State money. That is what your sentence says. I am saying: If that is true, why is it true? And that in turn is divided into two questions; namely, is it true, and as I understand it, your own State has just voted a \$25 million bond issue for handicapped people, who does not jibe with your statement here.

I am asking you whether or not you have your facts right; and if you do have your facts right, why?

Am I clear in my question?

Mr. RINGELHEIM. I thought I was clear in my answer, sir.

If one accepts the premise that a school budget relates to children—

Mr. BRADEMAs. Maybe you want to change your statement here. Your statement talks about State aid for the handicapped. Now is that sentence meant to refer solely to State aid for the education of handicapped children as distinguished from State service for all people?

Mr. RINGELHEIM. State aid for the handicapped.

Mr. BRADEMAs. So I come back to my two questions still, but I won't trouble you any more on that one.

I am puzzled, in all candor, in the way in which you have responded because you have answered me in a very general way where you say people don't believe they are getting enough return on their investment. Is there some rationale for your assertion here? I am not trying to badger you here.

Mr. RINGELHEIM. I don't feel badgered. Everyone indicates that education for the handicapped is an enormous cost. It is two times, three times, four times, five times—the cost of general education. People are asking what do we do with high cost programs? When we have high cost programs there is a general resistance to supporting these high cost programs. If you find resistance within the voting public for the education budget per se, it is the high cost programs which usually are impacted the most.

Now we have found that if budgets are defeated in the State of New Jersey, it is special programs or education for the handicapped which suffer as a result of the general defeat of budgets. I did want to indicate I am not speaking in terms of New Jersey. I did not want to bring New Jersey up; I think New Jersey has been quite appropriate in terms of its support, and the \$25 million bonding issue is only one instance.

Mr. BRADEMAs. Mr. Hansen.

Mr. HANSEN. You spoke, Mr. Ringelheim, of the taxpayers' revolt and resistance to State programs or the spending of money by the States for educating of the handicapped. In most cases, at least, these are the same taxpayers who paid taxes into the Federal Treasury.

Do you sense the same kind of resistance in a taxpayer's capacity as a Federal taxpayer to the spending of money to benefit the handicapped?

Mr. RINGELHEIM. First of all, everybody is against taxes now.

We have the issue before us in New Jersey where the local commitment has become disparate and this involves a heavy impact on the

State. The State then turns to the Federal Government. I think, however, that it is appropriate for the States to provide the service.

We have heard testimony that in many ways the fiscal impact has been due to pressure, not necessarily a commitment. We have court orders in New York, we have a major piece of legislation in Massachusetts, we have had court orders in Pennsylvania.

The question one would have to ask is: Were these issues before court orders? My feeling is they were. In a sense we don't address issues very easily unless we have, in many ways, the fiscal wherewithal to provide the services. I think the Federal Government has the capacity to provide the wherewithal on some equitable base.

MR. HANSEN. I think that is a good point and one we could discuss. I expect, whether the Federal Government has a greater wherewithal than the States.

Let me make clear my own agreement with what I understand to be a basic premise of yours; that is, the Federal Government does have the responsibility and should make the commitment and should provide leadership.

There are many ways the Federal Government can provide more effective leadership than the States. For example, in teacher training. The Federal Government can make a unique contribution in the training of teachers and in the areas of research.

In so many of these programs, those at the State level—and I have been there. I served many years in my own State legislature—feel this resistance by the taxpayer to those programs that don't have a broad appeal. This is one of those which is terribly important to the ones affected but to the average person it is an out-of-sight, out-of-mind type of thing. There is resistance when you ask the taxpayer to pay for those programs and they are costly.

So there is a great temptation to turn to the Federal Government and ask the Federal Government to do it because that is a little further removed.

In a State in the Mountain West, which will remain nameless, there is a record surplus this year, higher than it has ever been before in history, but there are a record number of letters and other communications asking the Federal Government to put more and more money into the program which the States are able but unwilling to support.

What I would like to see in this legislation is the development of a formula—I couldn't suggest it now—which will recognize and give effect to that Federal commitment and will be shouldered by the Federal Government as its responsibility, but at the same time will stimulate States to put their money and effort in the programs.

It is only with the cooperative effort of the States, volunteer organizations and others, that we can begin to meet the needs of educating handicapped persons in this country.

Thank you, Mr. Chairman.

MR. BRADENAS. I just have one other question. Dr. Ringelheim, which has to do with the policies of State legislatures.

Is it the case that in a number of States it is not possible by State law to provide special educational services for those for whom, under the language of State law, such services would be too expensive or are described as not effective?



Mr. RINGELHEIM. I wouldn't put it in those terms. I think there are States, including for example my own State, which have a category which is an exclusionary category called "neither educable or trainable."

It is interesting at this point to note, that aside from the fiscal aspects, I think this bill provides much more leadership potential than merely the money involved. New Jersey sits across the river from Pennsylvania, and Pennsylvania has had a consent order to provide programs for all handicapped children; just across the river New Jersey sits with an exclusionary clause in its law.

We have the unique situation where a child based in Pennsylvania coming from New Jersey is required under Pennsylvania law to be given an education. Under New Jersey law he is not required to have an education. Pennsylvania is faced with the dilemma of how to find funds from New Jersey to fund the child eligible in Pennsylvania and not eligible in New Jersey.

My answer to that is before the legislature and the State board of education at the present time. There is a recommendation from the Branch of Special Education and Pupil Personnel Services, of which I am the director, to strike down the "neither educable or trainable," without court order, without rancor, but on the basis that this is appropriate. This is the critical issue. The question is: What are the bases nationwide that children shall be served—and I use the word "shall" in the legal sense.

In many ways the complexities of State government are of a variety in which the commitment doesn't necessarily come easily. What you mentioned before concerns "those programs which are high cost." My own feeling is that in approaching the legislature of New Jersey, I talked about principles and morality, not cost, and the question of whether the handicapped children of New Jersey had a constitutional right to an education. We are coming around on a broad bases to believe that, and I believe this has to be a national situation.

Mr. BRADEMUS. First, how much does it cost to educate handicapped children? We have the Federal Government pay up to 75 percent of the excess costs in educating the handicapped. I wonder how far along you think we are in determining these costs.

This is a very important question as it relates to this bill and as it relates to the costs from one State to another.

Mr. RINGELHEIM. In terms of a formula one is going to have to look at the cost factors, one being teacher salaries. If you have a major diversity in teacher salary base you will have varying pupil cost bases. Second, the diversity of what is considered to be a maximum or minimum in class size in each area of handicapped; I think this has to be looked at on a national basis.

In many ways, the study you have called for here is again a critical factor in the evaluation of costs. If you go throughout the United States, you will find that in different States under different circumstances the variety of capability of deciding what is a handicapped child is a cost factor.

The court mandated in Pennsylvania that the evaluation of a child is to include an educational evaluation, a medical evaluation, a psychological evaluation and a psychosocial evaluation—I doubt that you

will find that model, except in New Jersey, as a commitment in terms of cost. We fully fund all those people.

There is another way to look at it. We are trying to suggest that those evaluation costs be borne by all children rather than by handicapped children and to spread the cost to all the children on the assumption every child has the potential of being evaluated and therefore those personnel are necessary.

There is the specific problem of how the costs are determined, what are the issues in the fiscal determination, and as a beginning we are in the process of putting together the recommendations for such a study in the report of the National Advisory Committee on the Handicapped.

Mr. BRADEMAS. We look forward to those recommendations of which you spoke.

Again, I want to express the appreciation of the members of the committee for your statement. We are grateful for your support.

The subcommittee will meet tomorrow morning in this room at 9:45, when we shall continue with hearings on this legislation. The subcommittee is adjourned.

[Whereupon, at 11:50 a.m. the subcommittee recessed, to reconvene at 9:45 a.m., Thursday, March 7, 1974.]

## FINANCIAL ASSISTANCE FOR IMPROVED EDUCATIONAL SERVICES FOR HANDICAPPED CHILDREN

THURSDAY, MARCH 7, 1974

HOUSE OF REPRESENTATIVES,  
SELECT SUBCOMMITTEE ON EDUCATION  
OF THE COMMITTEE ON EDUCATION AND LABOR,  
*Washington, D.C.*

The select subcommittee met 10:05 a.m., pursuant to recess, in room 2175, Rayburn House Office Building, Hon. John Brademas (chairman of the select subcommittee) presiding.

Present: Representatives Brademas (presiding), Quie, Eshleman, Biaggi, Chisholm and Hansen.

Staff present: Jack G. Duncan, counsel; Gladys Walker, clerk; Martin LaVor, minority legislative associate.

Mr. BRADEMAs. The Select Subcommittee on Education of the Committee on Education and Labor will come to order for the purpose of continuing hearings on H.R. 70, the education for handicapped children bill, and related measures.

The Chair wants to observe that this is the second day of hearings we have held on this measure which, in my estimation, might prove in the years ahead to be landmark legislation.

Yesterday, with the assistance of Governor Sargent of Massachusetts, Ewald Nyquist, Commissioner of Education for New York State, and Dr. Daniel Ringelheim, Director of Special Education for New Jersey, we began to look at some of the important issues involved with providing adequate and appropriate educational services for handicapped children.

We have heard, for example, that several of the States are making commendable efforts to provide educational services for handicapped youngsters. But we have received testimony, as well, indicating that the States are unable to complete the job by themselves.

And we have examined also the issues involved with protecting the privacy and confidentiality of records of young children and their families.

Finally, we have begun to look at some of the problems associated with determining precisely what are the "excess costs" involved with educating the handicapped.

The Chair wants to announce today that on Monday, March 18, we will be continuing these hearings, and anticipate that our witnesses will include Lt. Gov. Blair Lee of Maryland, as well as our distinguished colleague in the House, Congressman Claude Pepper, and Mr. Pottinger of the U.S. Justice Department.

I very much regret to note that Gov. Milton Shapp of Pennsylvania, who was scheduled to be with us this morning, will be unable to testify today.

But I know that he will be well represented by our first two witnesses this morning--Mr. Donald Carroll, Deputy Secretary of Education for the Commonwealth of Pennsylvania, and Dr. William Ohrtman, Chief of the Division of Special Education for Pennsylvania--both of whom have been of great assistance to us in the past with respect to the Education of the Handicapped Act.

Following Mr. Carroll and Dr. Ohrtman, we will hear from a panel of attorneys familiar with the legal rights of the handicapped. The panel will include:

Thomas L. Shaffer, dean of the University of Notre Dame Law School; Donald Hollingsworth, attorney with the Memphis and Shelby County Legal Services Association of Tennessee; and Pat Wald, an attorney with the Mental Health Law Project, in Washington, D.C.

We will then hear from a panel of parents of handicapped children who will tell us of their experiences in attempting to find appropriate educational settings for their children.

The parents' panel includes Marilyn Boerum of Silver Spring, Md.; Muriel Lee of Nashville, Ind.; and Samuel Teitelman, of New Haven, Conn.

The Chair would like to caution the witnesses that we have many people to hear from today. So to the extent possible the Chair would appreciate the witnesses summarizing their statements so that we might have as much time as possible for questions.

We will, of course, include the complete written statements in the hearing record.

Mr. Carroll and Dr. Ohrtman, we are delighted to see you. Won't you please take a seat and we will proceed.

**STATEMENT OF DONALD CARROLL, DEPUTY SECRETARY AND COMMISSIONER FOR BASIC EDUCATION, COMMONWEALTH OF PENNSYLVANIA, ACCOMPANIED BY DR. WILLIAM OHRTMAN, CHIEF, DIVISION OF SPECIAL EDUCATION**

Mr. CARROLL. Speaking specifically to H.R. 70, we agree totally with the congressional findings of purpose. We have found with our colleagues in the State that over the years we have had great difficulty in carrying out programs of special education. But in the past 5 or 6 years, we have been able to make some strides which we have described in our testimony.

Looking at the definition of handicapped children which you have in H.R. 70, I would raise the question about the need for more specificity as to that clause " \* \* \* who by reason thereof requires special education and related services." We think that particular clause, because it is not as specific as it might be, might make it easier to siphon off funds for other purposes; and we believe support for this program ought to be more categorical.

Pennsylvania operates on an excess cost basis. I am also used to working with very complicated formulas. Pennsylvania has a very complicated one but I must confess to you that I do not understand.

even having that background, the definition of excess cost as discussed in H.R. 70. We believe that you have built in a method whereby there is a floor established that excess cost is not an invitation to run away expenditures, if we read it correctly. However, we think that definition is open to some interpretation. I have to summarize by stating that is an excellent statement but I would like to point out things we like about it in particular.

One of these is the portion of deinstitutionalization. Over the last year, 700 children have been returned to community-based facilities. We are engaging in a calculated program to continue to do that sort of thing. So we feel that requirement of the law is an excellent one. We obviously are pleased with the provision for due process hearings because that was a portion of our agreement with the Pennsylvania Association of Retarded Citizens and the Federal District Court. We have found that while that provision is there, it is not used as often as some people think. But it does provide a useful way of expressing grievances.

We also support, among other things in that section, the participation of nonpublic schoolchildren. We do have a provision in our law that prescribes that school children shall be the first group to which education is offered, are intermediate groups are next, and finally it is the State's responsibility if the handicapped condition is great, we have purchasing options from approved private schools. We have found that provision gives us a great deal of flexibility. To be able to include them in this bill in our plans would be a great help to us.

We also commend you for the creation of a State advisory committee on special education. We think your provision to separate and not supplement—we do not come here hat in hand asking for funds for exceptional children programs on the one hand but, on the other hand, we think the Federal Government's contribution will make funds available to all exceptional children and we feel the State must continue to support the program as it does now and to expand that. We have plans to do that.

We also believe one of the great weaknesses of your program and other programs is the lack of evaluation. I assume your program will spur us on at least to do the kind of things we should be doing. We feel we have a good start. We initiated a program along these lines 2 years ago.

Finally, we agreed that 1 percent of the total grant for administration is adequate and generous, as far as we see our own needs. The State will continue, obviously, to support the present program and expand it. But insofar as what we are trying to do, we feel this will be enough to fund that particular program.

In summary, let me say we think this is a good bill. It would guarantee in Pennsylvania at least a program for the training and education of all our handicapped children and we are here to support that.

[The prepared statement of Mr. Carroll follows:]

STATEMENT BY DONALD M. CARROLL, JR., DEPUTY SECRETARY AND COMMISSIONER FOR BASIC EDUCATION, DEPARTMENT OF EDUCATION, COMMONWEALTH OF PENNSYLVANIA

Mr. Chairman and members of the committee: I am Donald M. Carroll, Deputy Secretary and Commissioner for Basic Education, Pennsylvania Department of Education, representing the Governor of the Commonwealth of Pennsylvania, The Honorable Milton J. Shapp and the Secretary of Education of Pennsylvania,

The Honorable John C. Pittenger. Thank you for permitting me the opportunity to address this distinguished committee.

I commend Representative Carl Perkins, Chairman of the Full Committee and Representative John Brademas, Chairman of the Select Subcommittee for moving with alacrity and enthusiasm on this critical matter of renewing Federal support for handicapped children in the United States. No nobler cause can be served in our nation than to provide the undisputed right to an appropriate free public education for handicapped children and youth. Federal legislation has assisted states striving to reach this goal. However, the job remains incomplete.

The legislation before this committee, namely H.R. 70 will enhance the reality of an appropriate education through funding that provides ample, high level, federal leadership, increased local resources; and research efforts in low incidence handicapping conditions about which little is understood. This legislation and its predecessor, Title VI of the Elementary and Secondary Education Act of 1965, have profound financial implications for the funding of special education programs in general (a possible 98 million dollars) for Pennsylvania. Even more, the bill represents renewed Federal commitment for equal educational opportunity for the handicapped child—a priority of the Commonwealth of Pennsylvania.

The expressed intent of H.R. 70 is to provide states with sufficient funds in order that no handicapped child will be without an appropriate education. Funds in the amount of 98 million dollars for Pennsylvania would mean we could report more nearly 100% of the handicapped were being served than our estimated 41% as calculated by reporting procedures of the United States Office of Education. To be sure, the percentages vary widely across groups of handicapped from perhaps 99% of the deaf and blind being appropriately educated to as low as 8% of the emotionally disturbed, or 15% of the learning disabled. It is not that these children are out of school. On the contrary, they are for the most part attending school daily. What causes the percentages to be so low in some areas of handicapping conditions is the limited instructional support as judged by the regular classroom teacher and other experts. Appropriate instruction and support systems simply are not available to remedy learning problems of the handicapped child. Therefore, daily, thousands of teachers are frustrated as they attempt to create learning environments suitable to overcome these learning problems. In addition, quality education requires our most careful attention. Unless and until better quality can be demonstrated in existing programs and services, many handicapped will be denied reaching the goal of developing to their fullest potential. The success of the proposed legislation H.R. 70 could greatly reduce or eliminate such situations.

The one program I do wish to discuss in some detail—and the one which I believe may be of greatest interest to you in your deliberations—is the consent agreement between the Commonwealth of Pennsylvania and the Pennsylvania Association for Retarded Children, commonly known as the PARC decision.

On January 7, 1971 the Pennsylvania Association for Retarded Children filed a class action suit in the United States Federal District Court for Eastern Pennsylvania in Philadelphia on behalf of 15 children who were mentally retarded or thought to be mentally retarded. These children for one reason or another had been either denied access to an educational program or had been enrolled and then excluded from an educational program.

The three judge panel heard lengthy testimony by expert witnesses. They judged the plaintiffs had a substantial case. They ordered due process hearings shall be afforded to parents before a change in educational assignment from regular education to special education or to no assignment at all. The judges further ruled: every mentally retarded child was entitled to an education; every mentally retarded child regardless of the degree of severity of the retardation could benefit from an appropriate program of education and training.

At this juncture, the judges ordered the Commonwealth and the Pennsylvania Association of Retarded Children to agree and consent on what could be done. After almost a year and a half, the Commonwealth Departments of Education, Justice and Welfare and the Pennsylvania Association for Retarded Children (PARC) reached agreements and returned to the Court.

On May 5, 1972 the Federal District Court handed down an order now commonly known as the PARC decision or Right to Education. The consent agreement on Right to Education essentially said to the Commonwealth it must do two things:

1. Carry out the census of mentally retarded children with the purpose to identify, locate and evaluate all such children.

2. Prepare an appropriate plan for the education and training of all such children.

I would also like to point out that the Commonwealth of Pennsylvania consistently supported the essentials of the PARC case and entered voluntarily into most of the elements contained in the final consent agreement. The consent agreement made history for Pennsylvania and the entire nation, and the activities which have resulted from it will determine whether we as educators, administrators and citizens have earned the role of real leaders in bringing vital new opportunities to young people previously denied access to our educational system.

I should re-emphasize that this decision dealt with only one type of handicap—mental retardation. This was the beginning of the "zero reject" concept which meant no child, no matter how severe his retardation shall be denied access to a free public program of education and training appropriate to his needs. The legislation before you is far broader in scope. In all other respects, however, the PARC decision is immediately pertinent to this legislation.

There are those who believe the court case was initiated in Pennsylvania based upon the assumption that if a state that has done so much for its handicapped can be shown to have failed to serve all children, then certainly the problem is even more serious in states where few resources have been directed to the education of the handicapped. The court found that interpretations and applications of sections of the Pennsylvania Public School Code of 1949 effectively denied handicapped children equal access to public education and training programs. More specifically, certain practices in the admission and/or retention of students have the result of excluding mentally retarded children from the Commonwealth's responsibility to provide a free public education for all citizens.

Let me indicate for you some of the conditions that deny equal access:

- (a) the use of mental age as a basis for the acceptance or retention of beginners in the public schools;

- (b) the denial of tuition and/or tuition and maintenance to mentally retarded children in approved private schools on the same terms as certain other exceptional children;

- (c) the denial of instruction in the home to mentally retarded children with no accompanying physical handicap or because the retardation was not short-term or deemed too severe for the child to profit from the instruction;

- (d) denial of due process in the placement of pupils mentally retarded or thought to be mentally retarded to an appropriate education and training.

These are, I believe, the types of exclusion which it is the interest of this subcommittee to eliminate.

In the PARC case, the court found, "That all mentally retarded persons are entitled to benefiting from a program of education and training" (Para. 6, Amended Consent Agreement) and that "It is the Commonwealth's obligation to place each mentally retarded child in a free public program of education and training appropriate to the child's capacity within the context of the general educational policy that, among the alternative programs of education and training required by statute to be available, placement in a regular public school class is preferable to placement in a special public school class and placement in a special public school class is preferable to placement in any other type of program of education and training" (Para. 7, Amended Consent Agreement).

Pennsylvania undertook to identify and provide suitable educational programs for all mentally retarded children between the ages of 6 and 21—and younger where the Commonwealth provides a program for children at an earlier age.

The first task was finding these people. We had at the beginning very little idea of how many pupils we were talking about. We developed COMPILE, the Commonwealth Plan for Identification, Location and Evaluation of Mentally Retarded Children. Calling for a coordinated effort by the Secretaries of Education and Welfare and all of their instrumentalities by the Governor's direction, any other State Agencies deemed necessary—(in the case of Education, these include school districts and intermediate units), the plan used such extensive techniques as:

- A search of records of the local school districts, intermediate units, County MR, MR units, State Schools and Hospitals (including waiting lists) and interim care facilities.

- Publication of the search in the various *public*



Selective house to house canvassing.

A 24-hour toll free telephone service to receive reports.

Local task forces

Two Federal Court-Appointed Masters to oversee the efforts

In addition, the plan calls for screening and in-depth individual evaluation including:

- 1 Motor development.
- 2 Perceptual-motor development.
- 3 Conceptual development
- 4 Communication skills development
- 5 Cognitive development.
- 6 Intellectual development and functioning.
- 7 Self-care.
- 8 Self-help
- 9 Social interaction.
- 10 Independence

We have put together what is probably the most complete identification system and current census of school-aged mentally retarded children in the world. In one of the Great Cities of this nation, Pittsburgh full implementation of a "zero reject" system in the education and training of the mentally retarded has been accomplished.

The census data revealed that 2,571 severely and profoundly retarded children, living in the community had never entered school and were denied an appropriate free public education. Approximately 3,300 kindergarten age children entered programs because of the Attorney General's Opinion that "school age" in Pennsylvania is the earliest age at which a school district admits children. Between the ages of 16 and 21 there were about 4,200 individuals who returned to school.

Through the consent agreement procedures to locate, identify and evaluate mentally retarded children, more than 19,000 pupils have been affected when re-evaluations of those in existing programs is included in the data. (See Appendix E-2)

Our second task has been to implement appropriate programs of education and training for these students. Thus we have begun through COMPET, the Commonwealth Plan for Education and Training of Mentally Retarded Children. The plan is made up of 20 learning modules specified in terms of growth and development according to behavioral characteristics. The selection and use of modules is coordinated with the evaluation phase of COMPILE, permitting a high degree of personalization of the program. Furthermore, COMPET is designed in such a way as to encourage and allow teachers to construct additional modules which are evaluated by the Right to Education Office for effectiveness, appropriateness, and possible inclusion in later editions of the COMPET manual. As Secretary of Education John C. Pittenger points out "COMPET is meant to be a working, changing document. It is only the first phase of Pennsylvania's program . . ." Major revisions are currently underway demanding continuing allocation of local, state and federal resources. In-service is accomplishing this task.

In-service education demands allocation of time and resources to meet the goals and objectives of improving the competencies of educators in regular and in special education. Under the sponsorship and support of Pennsylvania Department of Education and Department of Public Welfare, many local educational agencies and higher education agencies, have jointly developed and provided in-service.

There was an abundance of "know-how" in educating the mild and moderate retarded while little is known or understood about the education of the severely and profoundly retarded, a great number of whom are multi-handicapped. The full implication in signing the consent decree was a traumatic event for many teachers and administrators who faced this new and unexplored responsibility within the public schools. Had the Commonwealth not felt so strongly that the educational system must be accessible to all young people, the chorus of "This can't be done" might have been overwhelming. There was not a disagreement in philosophies. There was a genuine and practical pessimism about whether it could all be put together in terms of program, staff, facilities, and transportation. Equally important, could it be done in a relatively short time. In-service was again effective.

Pennsylvania is not a state that deals with gradualism—equal protection under the law means equal for all with full implementation immediately. State



government took the position of full compliance with the consent decree and maintained that posture from the time the agreement was signed. Delivery systems through local task forces and the state task force have been given the highest priority from the Governor's office which is represented on the state task force. The job is being done.

I am pleased to report that the experience of placing mentally retarded children in appropriate programs has many of those same people taking a different stance today. They are now saying "look how well it's gone", and "how can we go further".

The expense incurred sharply reduces the ability "to go further" unless Federal funds of the magnitude of the proposed legislation are made available.

The Governor of the Commonwealth proposed to the legislature that 41 million dollars in federal revenue sharing funds immediately be made available to carry out the federally imposed law under the Federal Court Order. The legislature concurred and the money was made available as of January 1973 retroactive to July 1, 1972. In his budget for 1973-74, he has again requested that 25 million dollars in revenue sharing be made available in support of special education and fully expects this to be done.

The unique financial arrangement in Pennsylvania of special education advance payments to intermediate units now gives equal force to current funding to school districts by use of revenue sharing funds.

This funding procedure relieved local education agencies of an untimely financial burden and placed the responsibility on state government.

Relief to state governments by federal sharing of costs in the education of the handicapped must be forthcoming in the same way.

Let it not be misunderstood. The Governor has commented on other occasions about the new "federalism" of the present administration and I restate his position.

"We're being given revenue sharing. At the same time we're facing massive budget cut in vital services that the Government must provide to its people. It's an illusion to think that revenue sharing the way it's been proposed is going to help us. In fact, I think we should be considering whether or not the whole revenue-sharing program shouldn't be reversed and go back to the categorical grants."

If federal sharing, then, is to result in an increase in the amount of funds Pennsylvania will receive to carry on the kinds of programs for the handicapped which have proved so significant, as I have described, this would appear to us a vital consideration for supporting such legislation as H.R. 70 which would provide federal aid categorically for the nation's handicapped children whose voices are not strong enough to speak for themselves.

We endorse "right to education" legislation. I might point out to you that Pennsylvania has gone beyond the strict requirements of the Commonwealth Consent Agreement. Beginning with the current school year, the Secretary of Education has assumed responsibility for education to mentally retarded children in community type programs including, but not limited to, growth and development centers, private licensed facilities, programs operated by the Department of Welfare, and interim facilities. Again, we are eager to move as quickly as possible to a zero-reject status for the education of all handicapped children, not just the mentally retarded. Within this context we would include the provisions of Due Process Hearings in the placement of children. Let me refer to the aspect of the PARC decision which has special relevance for the legislation before this subcommittee: the "due process" procedure.

The Commonwealth is enjoined:

"(1) to provide notice and the opportunity for a hearing prior to a change in educational status of any child who is mentally retarded or thought to be mentally retarded.

(2) to reevaluate the educational assignment of every mentally retarded child not less than every two years, or annually upon the parents' request, and upon such reevaluation, to provide notice and the opportunity for a hearing." (Order and Injunction)

Samples of detailed information covering direct and indirect cost of due process hearings are found in Appendix A.

The stipulation for conducting due process hearings is contained in Appendix B and the appeal procedures in Appendix C.

As I have described above, state governments can be responsive to the needs of handicapped children. The Federal Government should be equally able to be re-

sponsive through full-funding legislation. However, in no way should this legislation be so filled with bureaucratic red tape that flexibility to state and local education agencies impedes implementation of programs and services to the handicapped.

This committee should fully understand that the consent decree that has become known as "Right to Education" was carried out under existing mandates of School Law. The existing mandates were more fully implemented through several Attorney General's Opinions as listed in Appendix D.

A though compliance with the consent decree was carried out under court appointed Masters through October 1971 to October 1973, fully supported by state funds, state government has not allowed this concept of monitoring compliance to cease at the expiration of the Masters' term. The Commonwealth has assumed the role of advocate on behalf of handicapped children through the state task force supported by state and federal funds.

Both the Right to Education Office and the Masters (see Appendix E) have been viewed as perhaps the most significant factors in the successes enjoyed in providing an appropriate education to all mentally retarded children.

The Right to Education Office was given responsibility for monitoring compliance with the Federal Court Order as presented to all chief school administrators and interested parties in an open meeting which the Governor addressed (see Appendix F. At this same meeting, the procedures for implementing the court order were distributed and discussed (see Appendix G).

The Amended Due Process Stipulation and consent agreement was distributed to all chief school administrators through School Administrators' Memorandum 522 (see Appendix H).

The Masters no longer conduct hearings or act as monitors. Nevertheless, the Commonwealth views the consent decree as vital. In this regard the state task force role will continue in full force with expanded responsibilities and all the weight of the Masters (see Appendix I). A special assistant to the Commissioner of Basic Education in the role of advocate for Right to Education for all handicapped children is soon to be appointed. State and federal funds will be used to support activities associated with such an office. The Momentum of the consent decree and the "Right to Education" for the handicapped cannot be allowed to lessen.

Thus, it should be abundantly clear that the branches of state government—executive, judicial and legislative, working cooperatively, can provide vital services to its people. I challenge the federal government to join states in this same spirit of cooperation with all the flexibility that exists in truly reaching worthy goals.

We have depended on federal funds available through Education of the Handicapped Act, Parts B, C and D (P.L. 92-230), Elementary and Secondary Act, Title III, and Title I (P.L. 89-313) to finance certain aspects of this program. The Right to Education program has so far increased special education instructional expenses for Pennsylvania by approximately 18 million dollars in 1972-73.

This does not include increased costs for transportation.

The kinds of costs which this figure does include are those incurred through expanded programs such as:

- Psychologists to evaluate the children.
- Other experts on evaluation teams.
- Due process hearings and appeals.
- Additional teachers and supervisors.
- Additional aides.
- Additional class space (rent).
- Additional materials and equipment.
- Increased costs (either direct or indirect) for in-servicing.
- The costs of the Right to Education Office.

Costs of individual parent conferences for every change in educational assignment.

The citizens of Pennsylvania have assumed the costs of programs and services under the consent decree known as "Right to Education". The legislature passed and the Governor signed the bill for current payments to school districts using Federal revenue funds. Administratively, through the Secretary of Education in Pennsylvania, state funds were re-directed to local educational agencies. Cooperative arrangements were signed with other departments of state government so that all children were brought within the education system to have an equal educational opportunity made available to them (see Appendix J).

Cooperative arrangements for other disenfranchised school age children between departments has also taken place. In particular, I here refer to children in correctional institutions whose education was left to other than the Department of Education. This is only one of the many "extras" in benefits to children growing out of the PARC decision.

Mr. Chairman, Pennsylvania does not come before this committee with "hat in hand" because the citizens of the Commonwealth have put forth a state effort approaching one hundred million dollars and a local effort of nearly fifty million dollars to educate handicapped children. But continued and expanded federal funds are critically needed to maintain the momentum established by this court case.

At the present time approximately 70% of the total effort for the education and training of handicapped children in Pennsylvania is federal dollars. This percentage appears to be consistent across most states.

The Federal Government may have highlighted the problem of educating the handicapped, but it certainly has not provided sufficient funds to do the job. Indeed, the laws provide only for supplementing, expanding and improving programs not for continuous support. Therefore, the States are always faced with increasing burdens maintaining, supplemented, expanded and improved programs whenever federal dollars do not flow or are interrupted.

The proposed legislation with full funding will eliminate what is considered to be "undue burdens" by some states. The "undue burden" will not be permitted to exist as an excuse for failure to provide a tax supported free public education for the handicapped upon enactment of H. R. 70.

We are acutely aware of the financial burden of such programs, and of the need for committed and continuing financial support from the Federal government.

## APPENDIX A

## SAMPLE OF HEARING COSTS

IU	No hearings	Cost of transcript	Cost of preparation hearing officer opinion	Hearing officer fee	Travel expense	Average cost per hearing
1	3	\$349.81	\$77.42	\$100.00	( )	\$449.00
2	7	101.00	101.00	100.00	( )	484.85
26	4	( )	109.09	100.00	( )	299.00
3	4	199.50	156.92	87.50	( )	443.92
15	1	249.00	( )	100.00	( )	349.00
23	2	364.80	( )	100.00	( )	464.80
25	3	583.89	65.61	100.00	\$21.43	770.93
7	1	79.10	5.45	100.00	8.61	193.15
8	2	109.25	11.50	75.00	23.75	219.50
12	1	37.00	7.50	50.00	24.50	119.00
17	2	53.00	35.00	100.00	34.90	222.90
20	2	8.00	50.00	100.00	43.15	201.15
28	3	171.77	39.12	83.33	19.80	314.02
29	3	75.85	( )	83.33	( )	159.18

† Travel expense included with preparation of opinion.

- Office secretary used

• Not yet received by IU

## SAMPLE ATTENDANCE AT DUE PROCESS HEARINGS

IU	IU personnel	School district	Solicitors	Average length of hearing		PARC	MH MR	Other	Parents	Solicitor	Other
				Hours	Minutes						
2	3	2	1	1	45	3	1	-	2	1	---
29	4	4	1	3	5	1	-	-	1	2	---
22	1	5	1	4	20	1	1	-	2	1	1
17	3	3	1	3	30	-	-	-	2	1	2
26	2	6	1	3	30	1	-	-	2	1	---
14	1	2	1	2	45	1	-	-	2	-	---

## Appendix B and H

## COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF EDUCATION

## SCHOOL ADMINISTRATOR'S MEMORANDUM

Subject: Right to Education—Amended Due Process Stipulation and Consent Agreement.

To: Chief School Administrator, Intermediate Unit Executive Directors.

From: John C. Pittenger, Secretary of Education.

On May 5, 1972 the federal district court for Eastern Pennsylvania made final the order, injunction, stipulation and consent agreement relating to the PARC case. The attached documents are the final amended documents resulting from the action.

The original due process stipulation was issued to you in School Administrators Memorandum 428, September 20, 1971 and School Administrators Memorandum 451, November 8, 1971. The attached amended due process stipulation document supersedes those documents.

The original order, injunction and consent agreement was issued to you in School Administrators Memorandum 449, November 1, 1971. The attached order, injunction and amended consent agreement supersedes that document.

The amendments to the stipulation and consent agreement were done pursuant to Federal Rule of Procedure 23, under which members of the affected class of defendants may object and make recommendations for change. The modifications were minor but helpful and improved the substance of both the stipulation and the consent agreement.

The amended due process stipulation will be forthcoming as an amendment to Chapter 8 of the Regulations of the State Board of Education which was issued to you on July 9, 1971.

## ORDER AND INJUNCTION

AND NOW, this 5th day of May 1972, it is ORDERED that the AMENDED STIPULATION and AMENDED CONSENT AGREEMENT are APPROVED and ADOPTED as fair and reasonable to all members of both the plaintiff and defendant classes.

IT IS FURTHER ORDERED that the defendants: the Commonwealth of Pennsylvania, the Secretary of the Department of Education, the State Board of Education, the Secretary of the Department of Public Welfare, the named defendant school districts and intermediate units and each of the school districts and intermediate units in the Commonwealth of Pennsylvania, their officers, employees, agents and successors are ENJOINED as follows:

(a) from applying Section 1304 of the Public School Code of 1949, 24 *Purd. Stat.* Sec. 1304, so as to postpone or in any way deny to any mentally retarded child access to a free public program of education and training;

(b) from applying Section 1326 or Section 1330(2) of the School Code of 1949, 24 *Purd. Stat.* Secs 13-1326 and 13-1330(2) so as to postpone, to terminate or in any way deny to any mentally retarded child access to a free program of education and training;

(c) from applying Section 1371(1) of the School Code of 1949, 24 *Purd. Stat.* Sec. 13-1371(1) so to deny to any mentally retarded child access to a free public program of education and training;

(d) from applying Section 1376 of the School Code of 1949, 24 *Purd. Stat.* Sec. 13-1376, so as to deny tuition or tuition and maintenance to any mentally retarded person except on the same terms as may be applied to other exceptional children, including brain damaged children generally;

(e) from denying homebound instruction under 1372(3) of the School Code of 1949, 24 *Purd. Stat.* Sec. 13-1372(3) to any mentally retarded child merely because no physical disability accompanies the retardation or because retardation is not a short-term disability;

(f) from applying Section 1375 of the School Code of 1949, 24 *Purd. Stat.* Sec. 13-1375, so as to deny to any mentally retarded child access to a free public program of education and training;

(g) to provide, as soon as possible but in no event later than September 1, 1972, to every retarded person between the ages of six and twenty-one years as to the

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date of this Order and thereafter, access to a free public program of education and training appropriate to his learning capacities;

(h) to provide, as soon as possible but in no event later than September 1, 1972, wherever defendants provide a pre-school program of education and training for children aged less than six years of age, access to a free public program of education and training appropriate to his learning capacities to every mentally retarded child of the same age.

(i) to provide notice and the opportunity for a hearing prior to a change in educational status of any child who is mentally retarded or thought to be mentally retarded;

(j) to re-evaluate the educational assignment of every mentally retarded child not less than every two years, or annually upon the parents' request, and upon such re-evaluation, to provide notice and the opportunity for a hearing.

ARLIN M. ADAMS,

*Circuit Judge.*

THOMAS A. MASTERSON,

*District Judge.*

RAYMOND J. BRODERICK,

*District Judge.*

In the United States District Court for the Eastern District of Pennsylvania  
Civil Action No. 71-42

PENNSYLVANIA ASSOCIATION FOR RETARDED CHILDREN,  
NANCY BEIH BOWMAN, ET AL, PLAINTIFFS

v.

COMMONWEALTH OF PENNSYLVANIA, DAVID H. KURTZMAN, ET AL, DEFENDANTS  
AMENDED STIPULATION

AND NOW, this 11th day of February, 1972, subject to the approval and Order of the Court, it is agreed by the parties that the Stipulation of June 18, 1971, be amended to provide as follows:

1. *Definitions*

(a) "Change in educational status" shall mean any assignment or re-assignment based on the fact that the child is mentally retarded or thought to be mentally retarded to one of the following educational assignments: Regular Education, Special Education or to no assignment, or from one type of special education to another.

(b) "Department" shall mean the Pennsylvania Department of Education.

(c) "School District" shall mean any school district in the Commonwealth of Pennsylvania.

(d) "Intermediate Unit" shall mean the intermediate units as provided by the Pennsylvania School Code.

(e) "Regular Education" shall mean education other than special education.

(f) "Special Education" shall mean special classes, special schools, education and training secured by the local school district or intermediate unit outside the public schools or in special institutions, instruction in the home and tuition reimbursement, as provided in 24 Pa. Stat. Sec. 13-1371 through 13-1380.

(g) Wherever the word "Parent" is mentioned, it will include the term "Guardian" and the plural of each where applicable.

2. No child for school age who is mentally retarded or who is thought by any school official, the intermediate unit, or by his parents or guardian to be mentally retarded, shall be subjected to a change in educational status without first being accorded notice and the opportunity of a due process hearing as hereinafter prescribed. This provision shall also apply to any child who has never had an educational assignment.

Nothing contained herein shall be construed to preclude any system of consultations or conferences with parents heretofore or hereafter used by School Districts or Intermediate Units with regard to the educational assignment of children thought to be mentally retarded. Nor shall such consultations or conferences be in lieu of the due process hearing.

3. Within 30 days of the approval of this Stipulation by the Court herein, the State Board of Education shall adopt regulations, and shall transmit copies thereof to the superintendents of the School Districts and Intermediate Units,

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the Members of their Boards, and their counsel, which regulations shall incorporate paragraphs 1 and 2 above and otherwise shall provide as follows:

(a) Whenever any mentally retarded or allegedly mentally retarded child of school age is recommended for a change in educational status by a School District, Intermediate Unit or any school official, notice of the proposed action shall first be given to the parent or guardian of the child.

(b) Notice of the proposed action shall be given in writing to the parent or guardian of the child either (i) at a conference with the parent or (ii) by certified mail to the parent (addressee only, return receipt requested).

(c) The notice shall describe the proposed action in detail, including specification of the statute or regulation under which such action is proposed and a clear and full statement of the reasons therefor, including specification of any tests or reports upon which such action is proposed.

(d) The notice shall advise the parent or guardian of any alternative education opportunities available to his child other than that proposed.

(e) The notice shall inform the parent or guardian of his right to contest the proposed action at a full hearing before the Secretary of Education, or his designee, in a place and at a time convenient to the parent, before the proposed action may be taken.

(f) The notice shall inform the parent or guardian of his right to be represented at the hearing by any person of his choosing, including legal counsel, of his right to examine before the hearing his child's school records including any tests or reports upon which the proposed action may be based, of his right to present evidence of his own including expert medical, psychological and educational testimony, and of his right to call and question any school official, employee, or agent of a school district, intermediate unit or the department who may have evidence upon which the proposed action may be based.

(g) The notice shall inform the parent or guardian of the availability of various organizations including the local chapter of the Pennsylvania Association for Retarded Children, to assist him in connection with the hearing and the school district or intermediate unit involved shall provide the address and telephone number of such organization in the notice.

(h) The notice shall inform the parent or guardian that he is entitled under the Pennsylvania Mental Health and Mental Retardation Act to the services of a local center for an independent medical, psychological and educational evaluation of his child and shall specify the name, address and telephone number of the MH/MR center in his catchment area.

(i) The notice shall specify the procedure for pursuing a hearing.

If the notice is given at a conference with the parent the parent may at that conference indicate his satisfaction with the recommendation and may in writing waive the opportunity for a hearing or, if dissatisfied, may in writing request a hearing. In either event the parent may within five calendar days of the conference change this decision and may then request or waive the opportunity for a hearing by so indicating in writing to the school district or intermediate unit. If the parental decision is indicated at a conference, the parent shall be given a form which shall be mailed to the school district or intermediate unit within five calendar days thereafter, if the parent desires to change the decision. There shall be no change in educational assignment during the five day period.

If notice is given by certified mail, the parent must fill in the form requesting a hearing and mail the same to the school district or intermediate unit within ten (10) days of the date of receipt of the notice.

(j) The hearing shall be scheduled not sooner than fifteen (15) days nor later than thirty (30) days after receipt of the request for a hearing from the parent or guardian, provided however that upon good cause shown, reasonable extensions of these times shall be granted at the request of the parent or guardian.

(k) The hearing shall be held in the local district and at a place reasonably convenient to the parent or guardian of the child. At the option of the parent or guardian the hearing may be held in the evening and such option shall be set forth in the form requesting the hearing aforesaid.

(l) The hearing officer shall be the Secretary of Education, or a person designated by him acting in his stead, but shall not be an officer, employee or agent of any local district or intermediate unit in which the child resides.

(m) The hearing shall be an oral, personal hearing, and shall be public unless the parent or guardian specifies a closed hearing.

(n) The decision of the hearing officer shall be based solely upon the evidence presented at the hearing.

(o) The proposed change in educational status shall be approved only if supported by substantial evidence on the whole record of the hearing. Introduction by the school district or intermediate unit of the official report recommending a change in educational assignment, provided a copy of such report was given to the parent at the time notice was given, shall discharge its burden of going forward with the evidence, thereby requiring the parent to introduce evidence (as contemplated in paragraphs f, r, s, and t herein) in support of his contention.

(p) A stenographic or other transcribed record of the hearing shall be made and shall be available to the parent or guardian or his representative. Said record may be discarded after three years.

(q) The parent or guardian of the child may be represented at the hearing by any person of his choosing, including legal counsel.

(r) The parent, guardian or his representative shall be given reasonable access prior to the hearing to all records of the school district or intermediate unit concerning his child, including any tests or reports upon which the proposed action may be based.

(s) The parent or guardian or his representative shall have the right to compel the attendance of, and to question any witness testifying for the school board or intermediate unit and any official, employee, or agent of the school district, intermediate unit, or the department who may have evidence upon which the proposed action may be based.

(t) The parent or guardian shall have the right to present evidence and testimony, including expert medical, psychological or educational testimony.

(u) No later than twenty (20) days after the hearing, the hearing officer shall render a decision in writing which shall be accompanied by written findings of fact and conclusions of law and which shall be sent by registered mail to the parent or guardian and his representative.

(v) There shall be no change in the child's educational status without prior notice and the opportunity to be heard as set forth herein, except that in extraordinary circumstances the Director of the Bureau of Special Education, upon written request to him by the district or intermediate unit setting forth the reasons therefor and upon notice to the parent may approve an interim change in educational assignment prior to the hearing, in which event the hearing will be held as promptly as possible after the interim change. The Director shall act upon any such request promptly and in any event within three (3) days of its receipt.

(w) Any time limitation herein shall be construed and applied so as to do substantial justice and may be varied upon request and good cause shown.

4. The Department of Education shall revise its regulations to be in accord with the procedures agreed upon herein, shall disseminate the revised regulations to the school districts and intermediate units and shall thereafter file with the court and plaintiffs a statement of how and to whom said regulations and any covering statements were delivered.

5. Notice and the opportunity of a due process hearing, as set out in paragraph 3 above, shall be afforded on and after the effective date of the stipulation to every child who is mentally retarded or who is thought by any school official, the intermediate unit, or by his parents to be mentally retarded, before subjecting such child to a change in educational status as defined herein.

ED WEINTRAUB,  
Deputy Attorney General,  
THOMAS K. GHIMOL,  
Counsel for Plaintiffs.

#### FORM LETTER FOR DUE PROCESS HEARINGS

##### NOTICE OF PROPOSED CHANGE IN EDUCATION ASSIGNMENT

This is a notice of a recommended change in the educational assignment of your child who is mentally retarded or thought to be mentally retarded. Before this change can be made, you have the right to question the recommendation at a hearing. As this notice explains, you have the right to an independent evaluation of your child and the right to be represented at the hearing by any person of your



choice, including a representative of the Pennsylvania Association for Retarded Children and an attorney.

From:

(Name and address of local school district or intermediate unit and the responsible officer)

To:

(Name and address of parent or guardian)

Concerning: (Name of Child)

Case No

Present educational assignment:

This is your official notice that \* \* \* is recommending the following change

(School district or intermediate unit and the recommending school official)

In the educational assignment of your child:

- ☐ 1. Regular Class (24 Purdon's Statutes 5-501)
- ☐ 2. Special Class (24 Purdon's Statutes 13-1372)
- ☐ 3. Education and training secured by the district/unit outside public school or in special institutions: Specify  
(24 Purdon's Statutes 13-1372(3))
- ☐ 4. Tuition, maintenance grant for approved school for the brain damaged, socially or emotionally disturbed, deaf, blind, cerebral palsied, muscular dystrophied.  
(24 Purdon's Statutes 13-1376)
- ☐ 5. Homebound Instruction (24 Purdon's Statutes 2510-1)
- ☐ 6. Other: Specify

The educational assignments numbered (1) through (5) above which have been marked represent alternative educational opportunities which may be legal, available, but are not being recommended for your child.

This recommendation is being made for the following reasons:

If you are not satisfied with the above recommendation you are entitled by law to a FULL HEARING before the Secretary of Education, or his designee, BEFORE THE RECOMMENDATION MAY BE ACTED UPON.

If you want to have a hearing, you must return the attached form, called a "Request For Hearing" to the local school district or intermediate unit within ten (10) days of your receipt of this notice if received via certified mail. However, if form was presented to you at a conference and you desire to request a hearing and/or to change the decision you made at the conference, you must mail your request to the appropriate school official within five (5) calendar days of the conference.

Failure to return this request will constitute a waiver of your right to a hearing and will signify your acceptance of the recommendation made regarding the proposed change in the educational status of your child.

If you request a hearing, the following procedures will be followed:

- 1 The hearing will be held not sooner than 15 days nor later than 30 days after our receipt of your request for a hearing.
- 2 The hearing will be held within your local school district and in the evening if you wish.
- 3 It will be an oral, personal hearing, and will be public unless you specifically request a closed hearing.
- 4 You have the right to examine your child's school records before the hearing, including any tests or reports upon which the recommendation may be based.
- 5 You have the right to present evidence of your own, including any expert medical, psychological and educational testimony you may wish to present.
- 6 You have the right to compel the attendance at the hearing of any school official, employee, or agent of a school district, intermediate unit or the Department of Education who may have evidence upon which the recommendation may be based and to confront and cross examine him.
- 7 You may be joined at the hearing by any person of your choosing such as legal counsel, a friend or relative.
- 8 A record of the hearing will be transcribed and will be available to you.
- 9 The decision of the Secretary of Education or his designee will be based solely on the evidence presented at the hearing.
- 10 The decision shall be made within twenty (20) days after the hearing; it will be in writing, shall contain findings of fact, conclusions of law and will be sent to you by registered mail.
- 11 Until the Secretary or his designee makes his decision, there will be no change in your child's educational assignment.



The Pennsylvania Association for Retarded Children is experienced in these matters and is both willing and able to provide assistance to you in pursuing the hearing. The PARC Chapter nearest to you is \_\_\_\_\_

You are entitled under the Pennsylvania Mental Health and Mental Retardation Act to the services of your local base service unit for independent medical, psychological, and educational evaluation of your child. The evaluation will be made for a minimal or no fee. (Those making the evaluation may testify on your behalf at the hearing.) The MH-MR center in your area is \_\_\_\_\_ (phone \_\_\_\_\_)

If you wish to be represented by a lawyer but are unable to afford one, free legal services may be available to you from \_\_\_\_\_ (phone \_\_\_\_\_).

Date \_\_\_\_\_

*Signature District Superintendent  
or Intermediate Unit Executive Director.*

(The following should be placed in a pre-addressed envelope)

#### REQUEST FOR HEARING

Fill in and return this form to your local school district or intermediate unit and the appropriate responsible official.

Name of Child \_\_\_\_\_

Case No. \_\_\_\_\_

Please check appropriate block:

☐ I (we) *am* satisfied with the recommendation for a change in the educational assignment of my (our) child and do not desire a hearing on this recommendation.

☐ I (we) *am not* satisfied with the recommendation for a change in the educational assignment of my (our) child and desire a hearing on this recommendation not sooner than 15 days nor later than 30 days after your receipt of this request.

State regulations provide for the hearing to be held in your local school district and that if the parents or guardian would find an evening hearing and certain convenient, the hearing will be held during the evening. If you desire an evening hearing, please check here ☐.

Date _____	Signature(s) of Parent(s) or Guardian(s) _____
Date _____	Signature(s) of Parent(s) or Guardian(s) _____

In the United States District Court for the Eastern District of Pennsylvania

Civil Action No. 71-12

PENNSYLVANIA ASSOCIATION FOR RETARDED CHILDREN, NANCY BEITH BOWMAN,  
ET AL., PLAINTIFFS

v.

COMMONWEALTH OF PENNSYLVANIA, DAVID H. KURIZMAN, ET AL.

#### AMENDED CONSENT AGREEMENT

The Complaint in this action having been filed on January 7, 1971, alleging the unconstitutionality of certain Pennsylvania statutes and practices under the Equal Protection Clause of the Fourteenth Amendment and certain pending claims, a three-judge Court having been constituted, after motion, briefing and argument thereon, on May 26, 1971, and Order and Stipulation having been entered on June 18, 1971, requiring notice and a due process hearing before the educational assignment of any retarded child may be changed, and evidence having been received at preliminary hearing on August 12, 1971:

The parties being desirous of effecting an amicable settlement of this action, having entered into a Consent Agreement on October 7, 1971, approved by the Court on an interim basis that day, and notice having been given to members

of plaintiff and defendant classes and certain objections having raised by members of the classes, the objections having been heard, and in the particulars set forth below, agreed to, and all but one objection having been withdrawn by the members of the classes.

NOW, THEREFORE, the parties agree this 14th day of February, 1972, subject to the approval and Order of this Court, to the following final amended Consent Agreement.

## I.

1. This action may and hereby shall be maintained by plaintiffs as a class action on behalf of all mentally retarded persons, residents of the Commonwealth of Pennsylvania, who have been, are being, or may be denied access to a free public program of education and training while they are, or were, less than twenty-one years of age.

It is expressly understood, subject to the provisions of Paragraph 45 below, that the immediate relief hereinafter provided shall be provided to those persons less than twenty-one years of age as of the date of the Order of the Court herein.

2. This action may and hereby shall be maintained against defendant school districts and intermediate units as a class action against all of the School Districts and Intermediate Units of the Commonwealth of Pennsylvania.

3. Pursuant to Rule 23, Fed. R. Civ. P., notice of the extent of the Consent Agreement and the proposed Order approving this Consent Agreement, in the form set out in Appendix A, shall be given as follows:

(a) to the class of defendants, by the Secretary of Education, by mailing immediately a copy of this proposed Order and Consent Agreement to the Superintendent and the Director of Special Education of each School District and Intermediate Unit in the Commonwealth of Pennsylvania;

(b) to the class of plaintiffs, (i) by the Pennsylvania Association for Retarded Children, by immediately mailing a copy of this proposed Order and Consent Agreement to each of its Chapters in fifty-four counties of Pennsylvania; (ii) by the Department of Justice, by causing an advertisement in the form set out in Appendix A, to be placed in one newspaper of general circulation in each County in the Commonwealth; and (iii) by delivery of a joint press release of the parties to the television and radio stations, newspapers, and wire services in the Commonwealth.

## II.

4. Expert testimony in this action indicates that all mentally retarded persons are capable of benefiting from a program of education and training; that the greatest number of retarded persons, given such education and training, are capable of achieving self-sufficiency, and the remaining few, with such education and training, are capable of achieving some degree of self-care; that the earlier such education and training begins, the more thoroughly and the more efficiently a mentally retarded person will benefit from it; and, whether begun early or not, that a mentally retarded person can benefit at any point in his life and development from a program of education and training.

5. The Commonwealth of Pennsylvania has undertaken to provide a free public education to all of its children between the ages of six and twenty-one years, and further has undertaken to provide education and training for all of its mentally retarded children.

6. Having undertaken to provide a free public education to all of its children, including its mentally retarded children, the Commonwealth of Pennsylvania may not deny any mentally retarded child access to a free public program of education and training.

7. It is the Commonwealth's obligation to place each mentally retarded child in a free public program of education and training appropriate to the child's capacity within the context of the general educational policy that, among the alternative programs of education and training required by statute to be available, placement in a regular public school class is preferable to placement in a special public school class and placement in a special public school class is preferable to placement in any other type of program of education and training.

## Section 1304

8. Section 1304 of the School Code of 1949, as amended, 24 *Purd. Stat. Sec. 13 1304*, provides:

## Admission of beginners

The admission of beginners to the public schools shall be confined to the first two weeks of the annual school term in districts operating on an annual promotion basis, and to the first two weeks of either the first or the second semester of the school term to districts operating on a semi-annual promotion basis. Admission shall be limited to beginners who have attained the age of five years and seven months before the first day of September if they are to be admitted in the fall, and to those who have attained the age of five years and seven months before the first day of February if they are to be admitted at the beginning of the second semester. The board of school directors of any school district may admit beginners who are less than five years and seven months of age, in accordance with standards prescribed by the State Board of Education. The board of school directors may refuse to accept or retain beginners who have not attained a mental age of five years, as determined by the supervisor of special education or a properly certificated public school psychologist in accordance with standards prescribed by the State Board of Education.

The term "beginners," as used in this section, shall mean any child that should enter the lowest grade of the primary school or the lowest primary class above the kindergarten level.

9. The Secretary of Education, the State Board of Education, the named School Districts and Intermediate Units, each of them, for themselves, their officers, employees, agents, and successors agree that they shall cease and desist from applying Section 1304 so as to postpone or in any way to deny access to a free public program of education and training to any mentally retarded child.

10. The Attorney General of the Commonwealth of Pennsylvania (hereinafter "the Attorney General") agrees to issue an Opinion declaring that Section 1304 means *only* that a school district may refuse to accept into or to retain in the lowest grade of the *regular* primary school or the lowest *regular* primary class above the kindergarten level, any child who has not attained a mental age of five years.

11. The Attorney General of the Commonwealth of Pennsylvania shall issue an Opinion thus construing Section 1304, and the State Board of Education (hereinafter "the Board") shall issue regulations to implement said construction and to supersede Sections 5-200 of the Pupil Attendance Regulations, copies of which Opinion and Regulations shall be filed with the Court and delivered to counsel for plaintiffs on or before February 28, 1972, and they shall be issued and promulgated respectively on or before March 8, 1972.

12. The aforementioned Opinion and Regulations shall (a) provide for notice and an opportunity for a hearing as set out in this Court's Order of June 18, 1971, as amended, before a child's admission as a beginner in the lowest grade of a regular primary school, or the lowest regular primary class above kindergarten, may be postponed; (b) require the automatic re-evaluation every two years of any educational assignment other than to a regular class, and (c) provide for an annual re-evaluation at the request of the child's parent or guardian, and (d) provide upon each such re-evaluation that the school district or intermediate unit shall give notice and an opportunity for a hearing as set out in this Court's Order of June 18, 1971, as amended, on the findings of the re-evaluation and the appropriateness of the educational assignment based thereon. As used herein and throughout this Agreement the term "re-evaluation" contemplates that degree of analysis and investigation necessary to make a sound judgment as to the appropriateness of the educational assignment of the child thought to be mentally retarded, which in some instances, may involve reviewing existing cumulative data and documentation or, in other instances may involve comprehensive psycho-educational testing.

13. The aforementioned Opinion and Regulations shall also require the timely placement of any child whose admission to regular primary school or to the lowest regular primary class above kindergarten is postponed, or who is not retained in such school or class, in a free public program of education and training pursuant to Sections 1371 through 1382 of the School Code of 1949, as amended 24 *Purd. Stat. Sec. 13 1371* through *Sec. 13 1382*.

### Section 1326

14. Section 1326 of the School Code of 1949, as amended, 24 Purd. Stat. Sec. 13-1326, provides:

#### *"Definitions*

The term 'compulsory school age,' as hereinafter used shall mean the period of a child's life from the time the child's parents elect to have the child enter school, which shall be not later than at the age of eight (8) years, until the age of seventeen (17) years. The term shall not include any child who holds a certificate of graduation from a regularly accredited senior high school."

15. The Secretary of Education, the State Board of Education, the named School Districts and Intermediate Units, each of them for themselves, their officers, employees, agents and successors agree that they shall cease and desist from applying Section 1326 so as to postpone, to terminate, or in any way to deny access to a free public program of education and training to any mentally retarded child.

16. The Attorney General agrees to issue an Opinion declaring that Section 1326 means *only* that parents of a child have a compulsory duty while the child is between eight and seventeen years of age to assure his attendance in a program of education and training and Section 1326 does not limit the ages between which a child must be granted access to a free, public program of education and training. Defendants are bound by Section 1301 of the School Code of 1949, 24 Purd. Stat. Sec. 13-1301, to provide free public education to all children six to twenty-one years of age. In the event that a parent elects to exercise the right of a child six through eight years and or seventeen through twenty-one years of age to a free public education, defendants may not deny such child access to a program of education and training. Furthermore, if a parent does not discharge the duty of compulsory attendance with regard to any mentally retarded child between eight and seventeen years of age, defendants must and shall take those steps necessary to compel the child's attendance pursuant to Section 1327 of the School Code of 1949, 24 Purd. Stat. Sec. 13-1327, and related provisions of the School Code, and to the relevant regulations with regard to compulsory attendance promulgated by the Board.

17. The Attorney General shall issue an Opinion thus construing Section 1326, and related Sections, and the Board shall promulgate Regulations to implement said construction, copies of which Opinion and Regulations shall be filed with the Court and delivered to plaintiffs' counsel on or before February 28, 1972, and they shall be issued and promulgated respectively on or before March 8, 1972.

### Section 1330(2)

18. Section 1330 (2) of the School Code of 1949, as amended, 24 Purd. Stat. Sec. 13-1330 (2) provides:

#### *"Exceptions to compulsory attendance*

The provisions of this section requiring regular attendance shall not apply to any child who: (2) Has been examined by an approved mental clinic or by a person certified as a public school psychologist or psychological examiner, and has been found to be unable to profit from further public school attendance and who has been reported to the board of school directors and excused, in accordance with regulations prescribed by the State Board of Education."

19. The Secretary of Education, the State Board of Education, the named School Districts and Intermediate Units, each of them, for themselves, their officers, employees, agents, and successors agree that they shall cease and desist from applying Section 1330(2) so as to terminate or in any way to deny access to a free public program of education and training to any mentally retarded child.

20. The Attorney General agrees to issue an Opinion declaring that Section 1330(2) means *only* that a parent may be excused from liability under the compulsory attendance provisions of the School Code when, with the approval of the local school board and the Secretary of Education and a finding by an approved clinic or public school psychologist or psychological examiner, the parent elects to withdraw the child from attendance. Section 1330(2) may not be invoked by defendants, contrary to the parents' wishes, to terminate or in any way to deny access to a free public program of education and training to any mentally retarded child.

21. The Attorney General shall issue an Opinion so construing Section 1330(2) and related provisions and the Board shall promulgate Regulations to implement

said construction and to super-sede Section 5-400 of the Pupil Attendance Regulations, a copy of which Opinion and Regulations shall be filed with the Court and delivered to counsel for plaintiff on or before February 28, 1972, and they shall be issued and promulgated respectively on or before March 8, 1972.

#### *Pre-School Education*

22. Defendants, the Commonwealth of Pennsylvania, the Secretary of Education, the State Board of Education, the named School Districts and Intermediate Units, and the Secretary of Public Welfare, each of them, for themselves, their officers, employees, agents, and successors agree that they shall cease and desist from applying Section 1371(1) of the School Code of 1949, as amended, 24 *Purd. Stat.* Sec. 13-1371(1) so as to deny access to a free public program of education and training to any mentally retarded child, and they further agree that wherever the Department of Education through its instrumentalities, the School Districts and Intermediate Units, or the Department of Public Welfare through any of its instrumentalities provides a pre-school program of regular education and training to children below the age of six, they shall also provide a program of education and training appropriate to their learning capacities to all retarded children of the same age.

23. Section 1371(1) of the School Code of 1949, as amended, 24 *Purd. Stat.* Sec. 13-1371(1), provides:

#### *'Definition of exceptional children; reports; examination'*

"(1) The term 'exceptional children' shall mean children of school age who deviate from average in physical, mental, emotional or social characteristics to such an extent that they require special educational facilities or services and shall include all children in detention homes."

24. The Attorney General agrees to issue an Opinion declaring that the phrase "children of school age" as used in Section 1371 means children aged six to twenty-one and also whenever the Department of Education through any of its instrumentalities, the local School District, Intermediate Unit, or the Department of Public Welfare, through any of its instrumentalities provides a pre-school program of regular education and training for children below the age of six, whether kindergarten or however so called, means all mentally retarded children who have reached the age less than six at which such pre-school programs are available to others.

25. The Attorney General shall issue an Opinion thus construing Section 1371 and the Board shall issue regulations to implement said construction, copies of which Opinion and Regulations shall be filed with the Court and delivered to counsel for plaintiffs on or before February 28, 1972, and they shall be promulgated respectively on or before March 8, 1972.

#### *Tuition and Tuition and Maintenance*

26. The Secretary of Education, the State Board of Education, the named School Districts and Intermediate Units, each of them, for themselves, their officers, employees, agents and successors agree that they shall cease and desist from applying Section 1376 of the School Code of 1949, as amended, 24 *Purd. Stat.* 13-1376, so as to deny tuition or tuition and maintenance to any mentally retarded person.

27. The Attorney General agrees to issue an Opinion, and the Council of Basic Education of the State Board of Education agrees to promulgate Regulations, construing the term "brain damage" as used in Section 1376 and as defined in the Board's "Criteria for Approval . . . of Reimbursement" so as to include thereunder all mentally retarded persons, thereby making available to them tuition for day school and tuition and maintenance for residential school up to the maximum sum available for day school or residential school, whichever provides the more appropriate program of education and training. Copies of the aforesaid Opinion and Regulations shall be filed with the Court and delivered to counsel for plaintiff on or before February 28, 1972, and they shall be issued and promulgated respectively on or before March 8, 1972.

28. Defendants may deny or withdraw payments of tuition or tuition and maintenance whenever the school district or intermediate unit in which a mentally retarded child resides provides a program of special education and training appropriate to the child's learning capacities into which the child may be placed.

29. The decision of defendants to deny or withdraw payments of tuition or tuition and maintenance shall be deemed a change in educational assignment as to which a fee shall be given and an opportunity for a hearing afforded as set

out in this Court's Order of June 18, 1971 as amended. The issue at such hearing shall be whether the School District or Intermediate Unit provides an appropriate program of education and training for the particular child.

Whenever an additional facility or newly created program within a School District or Intermediate Unit is submitted for approval by the Secretary of Education, then in timely fashion, a School District or Intermediate Unit, upon written notice to the parent or guardian, may in writing request approval of the Director of the Bureau of Special Education, acting as the Secretary's designee, for the transfer of particular children from private schools to the additional facility or newly created program. Any district or unit so requested shall submit documentation of the appropriateness of the new facility or program for the particular children proposed for transfer. The parents or guardian shall be afforded a timely opportunity to comment and to submit any documentation with regard to the approval by the Department of Education of an additional facility or newly created program and with regard to its appropriateness for the particular child. If after appropriate investigation the Director of the Bureau certifies the new facility or newly created program as appropriate for those children and approves their transfers, such certification and approval shall be in lieu of individual hearings as provided above in this paragraph.

#### *Homebound Instruction*

30. Section 1372(3) of the School Code of 1949, as amended, 24 Purd. Stat. Sec. 13-1372(3), provides in relevant part:

#### *"Standards, plans, special classes or schools"*

(c) Special Classes or Schools Established and Maintained by School Districts:

"If it is not feasible to form a special class in any district or to provide such education for any (exceptional) child in the public schools of the district, the board of school directors of the district shall secure such proper education and training outside the public schools of the district or in special institutions, or by providing for teaching the child in his home."

31. The Secretary of Education, the State Board of Education, the named School Districts and Intermediate Units, each of them, for themselves, their officials, employees, agents and successors agree that they shall cease and desist from denying homebound instruction under Section 1372(3) to mentally retarded children merely because no physical disability accompanies the retardation or because retardation is not a short-term disability.

32. The Attorney General agrees to issue an Opinion declaring that a mentally retarded child whether or not physically disabled, may receive homebound instruction and the State Board of Education and/or the Secretary of Education agrees to promulgate revised Regulations and forms in accord therewith, superseding the Homebound Instruction Manual" (1970) insofar as it concerns mentally retarded children.

33. The aforesaid Opinion and Regulations shall also provide:

(a) that homebound instruction is the least preferable of the programs of education and training administered by the Department of Education and a mentally retarded child shall not be assigned to it unless it is the program most appropriate to the child's capacities;

(b) that homebound instruction shall involve education and training for at least five hours a week or for such other reasonable period as the State Board of Education may by regulation provide;

(c) that on assignment to homebound instruction shall be reevaluated not less than every three months, and notice of the evaluation and an opportunity for a hearing thereon shall be accorded to the parent or guardian, as set out in the Order of this Court dated June 18, 1971 as amended.

34. Copies of the aforementioned Opinion and Regulations shall be filed with the Court and delivered to counsel for plaintiffs on or before February 28, 1972, and they shall be issued and promulgated respectively on or before March 8, 1972.

#### *Section 1375*

35. Section 1375 of the School Code of 1949, as amended, 24 Purd. Stat. Sec. 13-1375 provides:

#### *"Educable children provided for by Department of Public Welfare"*

"The State Board of Education shall establish standards for temporary or permanent exclusion from the public school of children who are found to be

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uneducable and untrainable in the public schools. Any child who is reported by a person who is certified as a public school psychologist as being uneducable and untrainable in the public schools, may be reported by the board of school directors to the Superintendent of Public Instruction and when approved by him, in accordance with the standards of the State Board of Education, shall be certified to the Department of Public Welfare as a child who is uneducable and untrainable in the public schools. When a child is thus certified, the public schools shall be relieved of the obligation of providing education or training for such child. The Department of Public Welfare shall thereupon arrange for the care, training and supervision of such child in a manner not inconsistent with the laws governing mentally defective individuals."

36. Defendants, the Commonwealth of Pennsylvania, the Secretary of Education, the State Board of Education, the named School Districts and Intermediate Units, and the Secretary of Public Welfare, each of them, and themselves, their officers, employees, agents and successors agree that they shall cease and desist from applying Section 1375 so as to deny access to a free public program of education and training to any mentally retarded child.

37. The Attorney General agrees to issue an Opinion declaring that since all children are capable of benefiting from a program of education and training, Section 1375 means that insofar as the Department of Public Welfare is charged to "arrange for the care, training and supervision" of a child certified to it, the Department of Public Welfare must provide a program of education and training appropriate to the capacities of that child.

38. The Attorney General agrees to issue an Opinion declaring that Section 1375 means that when it is found, on the recommendation of a public school psychologist and upon the approval of the local board of school directors and the Secretary of Education, as reviewed in the due process hearing as set out in the Order of this Court dated June 18, 1971, that a mentally retarded child would benefit more from placement in a program of education and training administered by the Department of Public Welfare than he would from any program of education and training administered by the Department of Education, he shall be certified to the Department of Public Welfare for placement in a program of education and training.

39. To assure that any program of education and training administered by the Department of Public Welfare shall provide education and training appropriate to a child's capacities, the plan referred to in Paragraph 30 below shall specify, *inter alia*,

(a) the standards for hours of instruction, pupil-teacher ratios, curriculum, facilities, and teacher qualifications that shall be met in programs administered by the Department of Public Welfare;

(b) the standards which will qualify any mentally retarded person who completes a program administered by the Department of Public Welfare for a High School Certificate or a Certificate of Attendance as contemplated in Sections 8 132 and 8 133 of the Special Education Regulations;

(c) the reports which will be required in the continuing discharge by the Department of Education of its duty under Section 1302(1) of the Administrative Code of 1929, as amended, 71 *Purd. Stat.* Sec. 352(1), to inspect and to require reports of programs of education and training administered by the Department of Public Welfare, which reports shall include, for each child in such programs an annual statement of educational strategy as defined in Section 8 123 of the Special Education Regulations; for the coming year and at the close of the year, an evaluation of that strategy;

(d) that the Department of Education shall exercise the power under Section 1926 of the School Code of 1949, as amended, 24 *Purd. Stat.* Sec. 19 1926 to supervise the programs of education and training in all institutions wholly or partly supported by the Department of Public Welfare, and the procedures to be adopted therefor.

40. The Attorney General agrees to issue an Opinion so construing Section 1375 and the Board to promulgate Regulations implementing said construction, which Opinion and Regulations shall also provide:

(a) that the Secretary of Education shall be responsible for assuring that every mentally retarded child is placed in a program of education and training appropriate to his learning capacities, and to that end, by Rules of Procedure requiring that reports of the annual census and evaluation, under Section 1371(2) of the School Code of 1949 as amended, 24 *Purd. Stat.* 13-1371(2), be made to him, he shall be informed as to the identity, condition, and educational status of every mentally retarded child within the various school districts.



(b) that should it appear that the provisions of the School Code relating to the proper education and training of mentally retarded children have not been complied with or the needs of the mentally retarded child are not being adequately served in any program administered by the Department of Public Welfare, the Department of Education shall provide such education and training pursuant to Section 1926 of the School Code of 1949, as amended, 24 Purd. Stat. Sec. 19-1926;

(c) that the same right to notice and an opportunity for a hearing as is set out in the Order of this Court of June 18, 1971, shall be accorded on any change in educational assignment among the programs of education and training administered by the Department of Public Welfare.

(d) that not less than every two years the assignment of any mentally retarded child to a program of education and training administered by the Department of Public Welfare shall be re-evaluated by the Department of Education and upon such re-evaluation, notice and an opportunity to be heard shall be accorded as set out in the Order of this Court, dated June 18, 1971, as amended.

41. Copies of the aforesaid Opinion and Regulations shall be filed with the Court and delivered to counsel for plaintiffs on or before February 28, 1972, and they shall be issued and promulgated respectively on or before March 8, 1972.

#### IV.

42. Each of the named plaintiffs shall be immediately re-evaluated by defendants and, as soon as possible, but in no event later than October 13, 1971, shall be accorded access to a free public program of education and training appropriate to his learning capacities.

43. Every retarded person between the ages of six and twenty-one years as of the date of this Order and thereafter shall be provided access to a free public program of education and training appropriate to his capacities as soon as possible but in no event later than September 1, 1972.

44. Whenever defendants provide a pre-school program of regular education and training for children less than six years of age, whether kindergarten or however called, every mentally retarded child of the same age as of the date of this Order and hereafter shall be provided access to a free public program of education and training appropriate to his capacities as soon as possible but in no event later than September 1, 1972.

45. The parties explicitly reserve their right to hearing and argument on the question of the obligation of defendants to accord compensatory educational opportunity to members of the plaintiff class of whatever age who were denied access to a free public program of education and training without notice and without a due process hearing while they were aged six years to twenty-one years, for a period equal to the period of such wrongful denial.

46. To implement the aforementioned relief and to assure that it is extended to all members of the class entitled to it, Herbert Goldstein, Ph.D. and Dennis E. Haggerty, Esq. are appointed Masters for the purpose of overseeing a process of identification, evaluation, notification, and compliance hereinafter described.

47. Notice of this Order and of the Order of June 18, 1971, in form to be agreed upon by counsel for the parties, shall be given by Commonwealth defendants to the parents and guardian of every mentally retarded person, and of every person thought by defendants to be mentally retarded, of the ages specified in paragraphs 43 and 44 above, now resident in the Commonwealth of Pennsylvania, who is not being accorded access to a free public program of education and training, whether as a result of exclusion, postponement, exclusion, or in any other fashion, formal or informal.

48. Within thirty days of the date of this Order, Commonwealth defendants shall formulate and shall submit to the Masters for their approval a satisfactory plan to identify, locate, evaluate and give notice to all the persons described in the foregoing paragraphs, and to identify all persons described in paragraph 45 which plan shall include, but not be limited to, a search of the records of the local school districts, of the Intermediate Units, of county MH, MR units, or the State schools and Hospitals, including the waiting lists for admission thereto, and of interim care facilities, and to the extent necessary, publication in newspapers and the use of radio and television in a manner calculated to reach the persons described in the foregoing paragraph. A copy of the proposed plan shall be delivered to counsel for plaintiffs who shall be accorded a right to be heard thereon.



49. Within ninety days of the date of this Order, Commonwealth defendants shall identify and locate all persons described in paragraph 47 above, give them notice and provide for their evaluation, and shall report to the Masters the names, circumstances, the educational histories and the educational diagnoses of all persons so identified.

50. By April 1, 1972, Commonwealth defendants shall formulate and submit to the Masters for their approval a plan, to be effectuated by September 1, 1972, to commence or recommence a free public program of education and training for all mentally retarded persons described in paragraph 47 above, and for all mentally retarded persons of such ages hereafter. The plan shall specify the range of programs of education and training, their kind and number, necessary to provide an appropriate program of education and training to all mentally retarded children, where they shall be conducted, arrangements for their financing and, if additional teachers are found to be necessary, the plan shall specify recruitment, hiring, and training arrangements. The plan shall specify such additional standards and procedures, including but not limited to those specified in paragraph 39 above, as may be consistent with this Order and necessary to its effectuation. A copy of the proposed plan will be delivered to counsel for plaintiffs who shall be accorded a right to be heard thereon.

51. If, by September 1, 1972, any local school district is not providing a free public education to all mentally retarded persons within its responsibility as provided hereinbefore in special classes or schools established and maintained by school districts or has not secured such proper education and training outside the public schools of the district or in special institutions, and if an intermediate unit is not providing such education by means of additional classes or schools as are necessary or otherwise providing for the proper education and training of such persons who are not enrolled in classes or schools maintained and operated by school districts or who are not otherwise provided for, the Secretary of Education, pursuant to Section 1372(5) of the Public School Code of 1939, 24 P.S. Stat. 1372(5), shall directly provide, maintain, administer, supervise and operate programs for the education and training of these children.

52. The Masters shall hear any members of the plaintiff class who may be aggrieved in the implementation of this Order.

53. The Masters shall be compensated by Commonwealth defendants.

54. This Court shall retain jurisdiction of the matter until it has heard the final report of the Masters on or before October 15, 1972.

55. Any child who is mentally retarded and who also has another exceptionality or other exceptionalities whether blind, deaf, cerebral palsy, brain damaged, muscular dystrophied or socially or emotionally disturbed, or otherwise irrespective of the primary diagnosis, shall be considered mentally retarded for purposes of the Agreements and Orders herein.

Acknowledged:

S. J. SHANE CREAMER,  
*Attorney General.*  
ED WEINBAUER,  
*Deputy Attorney General, At-*  
*torneys for Defendants.*  
THOMAS K. GILFOOJ,  
*Attorney for Plaintiffs.*

JOHN C. PITTENGER,  
*Secretary of Education.*  
DR. WILLIAM F. ORTMAN,  
*Director, Bureau of Special*  
*Education.*  
MRS. HELENE WOHIGEMUTH,  
*Secretary of Public Welfare.*  
EDWARD R. GOLDMAN,  
*Commissioner of Mental*  
*Retardation.*

#### Appendix C

COMMONWEALTH OF PENNSYLVANIA,

June 1, 1973.

Subject: Official Appeal Procedures

To: Hearing Officers and Intermediate Unit Special Education Directors,  
From: Joseph N. Lantzer, Director, The Right to Education Office

By direction of the Deputy Attorney General, the word *registered* mail within the Appeal Procedure shall be changed to read *certified mail with return receipt requested*. Certified mail is cheaper and assures the same proof of delivery.

Referring to the Official Appeal Procedure dated May 22, 1973, the change will take place on Page one of the Deputy Attorney General's Memorandum Item 2, second line last word.

The next changes will be under "Guidelines and Policy Statements for the Due Process Hearing and Appeal Procedures"—Page 2, Item V-A, the fourth line, 8th word and VI A, Second line, 8th word

Future copies of the appeal procedures coming from this Office will indicate the noted changes

Re: Right to Education - Appeals to the Office of the Secretary of Education from the Decisions of Hearing Officers

To: Joseph N. Lanzer, Director, The Right to Education Office.

From: Larry B. Selkowitz, Deputy Attorney General.

Note: This memorandum supplements School Administrator's Memorandum No. 508 and revokes any sections of that Memorandum that are inconsistent with any of the provisions contained herein.

In order to facilitate the Handling of appeals from Hearing Officers under the Right to Education program, the following procedures are hereby issued.

Pursuant to Section 3(a) of the amended stipulation as set forth in School Administrator's Memorandum 522, each Hearing Officer shall, within the time limit prescribed by Section 3(a), send his written decision, in the form of a recommendation to the Secretary of Education, to the Right to Education Office in Harrisburg, Pa., where it shall be received on the Secretary's behalf. The decision must be accompanied by written findings of fact and conclusions of law. Copies of the recommendations, findings, and conclusions shall also be sent by registered mail to the parent or guardian and his representative and to the school district or intermediate unit which proposed the change in educational status. Written copies of the appeal procedures must accompany these mailings.

Exceptions to the recommendations of the Hearing Officer may be filed with the Secretary of Education by the parent, guardian, school district, intermediate unit and Right to Education Office, and should be sent to the Right to Education Office and to the opposing parties. All exceptions must be as specific as possible.

1. Such exceptions must be sent by registered mail within fifteen (15) days of the excepting parties receipt of the Hearing Officer's recommendations.

2. Answers to exceptions may be filed by the non-excepting party (appellee). Such answers must be sent by registered mail to the Right to Education Office within 10 days of the appellees receipt of the exceptions.

3. If no exceptions are submitted, the Secretary of Education must certify the Hearing Officer's recommendations as being the final decision in that case.

4. Upon receipt of exceptions and answers, the Secretary of Education shall review the record and recommendation(s) of the Hearing Officer, and shall render a decision, in writing, copies to be sent to all parties. The Secretary shall render this decision no later than 20 days after receipt of the exceptions or the answers. The Secretary shall be bound by the Hearing Officer's findings of fact if supported by a reasonable reading of the record. The Secretary may accept or reject the recommendation(s) of the Hearing Officers. If the Secretary rejects the recommendation(s), he shall state in his decision the reason(s) for disagreeing with the Hearing Officer's findings of fact or conclusions of law.

Any party may appeal any final decision of the Secretary to the Commonwealth Court in accordance with any applicable provisions of the Administrative Agency Law, 1945, June 4, P.L. 1388 § et seq. (17 P.S. § 1710-41) and the Appellate Court Jurisdiction Act of 1970, July 31, P.L. --- No. 223, Art. 1 §101 (17 P.S. § 241.101).

Attached to this Memorandum is a copy of the Guidelines and Policy Statements for Due Process Hearings and the Appeal Procedure as prepared by the Right to Education Office.

## GUIDELINES AND POLICY STATEMENTS FOR DUE PROCESS HEARINGS AND APPEAL PROCEEDINGS

### I. GENERAL STATEMENT

A. All expenses incurred for hearings and hearing officers shall be paid by the intermediate unit in which the resident district of the child is located.

B. An estimated amount of money shall be incorporated into the intermediate unit special education budget under other contracted services administrative category 0519 for the purpose of paying hearing officers, transcribing services and transcriptions of hearings.

## II. HEARING OFFICERS

A. Hearing officers shall be paid \$100 for each hearing and \$5.00 per hour not to exceed 15 hours for the writing of the opinion.

B. Additional expenses may be incurred by the hearing officer for travel not to exceed 10 cents per mile or the exact cost if public transportation is utilized.

C. Except in emergencies hearing officers will not be selected who must travel to the extent that meals and lodging will be required.

D. In such emergencies lodging and meal expenses shall not exceed Commonwealth of Pennsylvania, Department of Education allowances.

E. The intermediate unit within 10 days of receipt of the bill for services from the hearing officer shall mail a check to the hearing officer and the court stenographer for services rendered.

F. Miscellaneous expenses incurred by the hearing officer such as telephone calls, typing of the decision, etc. shall also be paid by the intermediate unit within 10 days of receipt of the bill.

## III. COURT STENOGRAPHER

A. Since the hearing record is the same as in a court hearing a court stenographer would be preferable. However, qualified secretarial services can be used by agreement of the parties.

B. The rate of remuneration shall be the local rate per hour for recording when a court reporter is employed.

C. The court stenographer shall be paid the local rate per page for the transcription.

## IV. TRANSCRIPTION

A. All recordings shall be transcribed immediately.

B. Within five days after the hearing has taken place, the transcript shall be sent to the hearing officer.

## V. HEARING OFFICER'S DECISION

A. No later than twenty (20) days after the hearing, the hearing officer shall render a decision in writing which shall be accompanied by written findings of fact and conclusion of law and which shall be sent by registered mail to the parent or guardian and his representative.

B. Two copies of the hearing officer's decision along with the transcription shall be forwarded to The Right to Education Office.

C. If, for some unforeseen reason, there is a delay in the transcription reaching the hearing officer, the hearing officer shall notify the parties in the case of The Right to Education office of the delay and estimated date of delivery of the decision.

## VI. APPEAL PROCEDURES

A. Any exception to the decision must be sent to The Right to Education Office by registered mail within fifteen (15) days of the excepting parties receipt of the Hearing Officers recommendations. A copy should also be sent, in the same manner, to the opposing party (appellee).

B. The opposing parties can file an answer to the exceptions. The answers must be sent to the Right to Education office by registered mail, within 10 days of the appellee's receipt of exceptions. A copy of the answers should be sent to the excepting party as well.

C. The Right to Education Office, upon receipt of said exceptions and answers, will immediately transmit them along with the official transcript and the hearing officers' recommendations to the Secretary of Education.

D. If no exceptions are submitted by either party, but the hearing officer's decision is in direct opposition to the school law, the Right to Education Office, as an interested party, may submit the aforementioned materials to the Secretary of Education for review and an opinion. In such cases, the Right to Education Office shall notify both parties and the hearing officer in the case.

E. The Secretary shall review all exceptions and answers and, in appropriate circumstances, will utilize the resources and expertise of the various divisions within the Department of Education, the Office of Basic Education, and the Legal Division will be available for such consultations, as well as all other divisions in the Department.

F. No decision by the Secretary of Education shall be rendered later than twenty (20) days after receipt of the exceptions and answers.

G. Any party may appeal any final decisions of the Secretary to the Commonwealth Court in accordance with any applicable provisions of law.

### Appendix D-1

#### OFFICIAL OPINION No. 35

#### MENTALLY RETARDED—ACCESS TO PUBLIC EDUCATION

1. On June 18, 1971, the United States District Court for the Eastern District of Pennsylvania entered an order requiring notice to the parents or guardian and an opportunity to be heard prior to any change in the educational assignment of any child believed to be retarded.

2. Postponement of admission to regular school or class may have a significant effect on a child's education and training and should be deemed a significant change in educational assignment requiring the safeguard of notice and opportunity for hearing.

3. As an additional safeguard, the alternative educational assignment of a postponed child should automatically be reevaluated every two years.

4. "Children of School Age" as used in Section 1371 of the Public School Code concerning "exceptional children" means children age 6 to 21, and also means all mentally retarded children who have reached an age less than 6 at which pre-school programs are available to others.

5. All mentally retarded children are presumed to be brain damaged as used in Section 1376 of the Public School Code despite the presence of other exceptionalities.

6. When it is found on the recommendation of a public school psychologist and upon the approval of the local board of school directors and the Secretary of Education that a mentally retarded child would benefit more from placement in a program of education and training administered by the Department of Public Welfare than from any program of education and training administered by the Department of Education, the child should be certified to the Department of Public Welfare for timely placement in a program of education and training.

7. It is the responsibility of the Secretary of Education to be sure that every mentally retarded child is placed in a program of education and training appropriate to the child's individual capacities.

8. Homebound instruction should not be denied to a mentally retarded child merely because no physical disability accompanies the retardation or because retardation is not considered to be a short-term disability.

9. Homebound instruction is the least preferable of the programs of education and training administered by the Department of Education and a mentally retarded child shall not be assigned to it unless it is the program most appropriate to the child's capacity. An assignment to homebound instruction should be reevaluated not less than every three months.

10. A mentally retarded may be suspended for disciplinary reasons pursuant to Section 1318 of the School Code provided that the School District or Intermediate Unit obtains prior approval of the Director of the Bureau of Special Education and that a prompt hearing be held regarding this interim change in educational assignment.

COMMONWEALTH OF PENNSYLVANIA,

OFFICE OF ATTORNEY GENERAL,

Harrisburg, Pa.

HON. HELENE WOHTGEMUTH,  
Secretary of Public Welfare,  
Harrisburg, Pa.

and

HON. JOHN C. PITFENGER,  
Secretary of Education,  
Harrisburg, Pa.

DEAR MRS. WOHTGEMUTH AND MR. PITFENGER: On October 22, 1971, pursuant to the Order, Injunction, and Consent Agreement entered on October 7, 1971, in the United States District Court for the Eastern District of Pennsylvania (Civil Action No. 71-12) in the case of the *Pennsylvania Association for Retarded Child-*

*decn, et al. v. Commonwealth of Pennsylvania, et al.* (hereafter PARC case). Attorney General's Opinion No. 71 was issued. On May 5, 1972, the Court issued an Order approving and adopting an Amended Stipulation and an Amended Consent Agreement dated February 14, 1972. In order to comply with the Amended Consent Agreement of February 14, 1972, I am reissuing the Attorney General's Opinion so as to include those sections required by the Amended Consent Agreement and to provide further guidance in the implementation of that document and the Amended Stipulation.

## I.

A) The Amended Consent Agreement requires us, and you have asked us, to determine whether Section 1304 of the School Code allows a school district, or an intermediate unit to deny to a mentally retarded child access to a free program of public education.

Section 1304, dealing with the admission of beginners to Pennsylvania Public Schools, provides as follows:

"The admission of beginners to the public schools shall be confined to the first two weeks of the annual school term in districts operating on an annual promotion basis, and to the first two weeks of either the first or the second semester of the school term in districts operating on a semi-annual promotion basis. Admission shall be limited to beginners who have attained the age of five years and seven months before the first day of September if they are to be admitted in the fall, and to those who have attained the age of five years and seven months before the first day of February if they are to be admitted at the beginning of the second semester. The Board of School Directors of any school district may admit beginners who are less than five years and seven months of age, in accordance with standards prescribed by the State Board of Education. The Board of School Directors may refuse to accept or retain beginners who have not attained a mental age of five years, as determined by the supervisor of special education or a properly certified public school psychologist in accordance with the standards prescribed by the State Board of Education. "The term 'beginners' as used in this section, shall mean any child that should enter the lowest grade of the primary school or the lowest primary class above the kindergarten level."

You are hereby advised that this section means *only* that a school district may refuse to accept into or retain in the lowest grade of the *regular* primary school or the lowest *regular* primary class above the kindergarten level any child who has not attained a mental age of five years. After any child whose admission to regular primary school or to the lowest regular primary class above kindergarten is postponed, or who is not retained in such school or class, is entitled to immediate placement in a free public program of education and training pursuant to sections 1371 through 1382 (which provide alternative programs of education and training for exceptional children).

B) On June 18, 1971, the United States District Court entered an order in the PARC case (cited above). Essentially, this Order requires notice to the parents or guardian and an opportunity to be heard prior to the change in the educational assignment of any child believed to be retarded. Therefore, Section 1304 must be read in such a way as to allow for the following procedure:

Before a child's admission as a beginner in the lowest grade of a regular primary school or the lowest regular primary class above kindergarten may be postponed, the parent or guardian of such a child should receive notice and an opportunity to be heard as set forth in the Court's Order of June 18, 1971. Because postponement of admission to a regular school or class may have a significant effect on the child's education and training, postponement should be deemed a significant change in the educational assignment within the Court's Order of June 18, 1971, thereby requiring the safeguard of notice and opportunity for a hearing to insure that postponement is appropriate for the child in question. As an additional safeguard, the alternative educational assignment of a postponed child should be automatically reevaluated every two years, and, at the request of a child's parent or guardian, should be reevaluated annually. With regard to each reevaluation, the child's parent or guardian should receive notice and an opportunity for a hearing in accordance with the Court's Order of June 18, 1971.

## II.

In accordance with the Amended Consent Agreement in the PARC Case we are required and you have also asked that we determine between what ages a mentally retarded child must be granted access to a free program of public education.

Section 1326 of the school code, the definitional section with regard to enforcement of public school attendance, provides in relevant part:

The term "compulsory school age," as hereinafter used shall mean the period of a child's life from the time the child's parents elect to have the child enter school, which shall be not later than at the age of eight (8) years, until the age of seventeen (17) years. The term shall not include any child who holds a certificate of graduation from a regularly accredited senior high school."

This section means *only* that the parents of a child have a compulsory duty, while the child is between eight and seventeen years of age, to assure that child's attendance in a free public program of education and training. Furthermore, if a parent does not discharge the duty of compulsory attendance with regard to any mentally retarded child between eight and seventeen years of age, then the Department of Education shall take those steps necessary to compel the child's attendance pursuant to Section 1327, and any compulsory attendance regulations.

However, Section 1326 does not limit the ages between which a child must be granted access to such a program. Section 1301 of the School Code requires that the Commonwealth provide a free public education to all children six (6) to twenty-one (21) years of age. Thus, no school district or intermediate unit can deny access to a free program of public education to any mentally retarded child age 6 thru 21 years whose parents elect to enroll that child in such a program.

Furthermore, in accordance with the provisions of The Amended Consent Decree, the right to access of a mentally retarded child to a free program of public education is not affected by section 1330(2) of the School Code which provides:

*Exceptions to compulsory attendance*

The provisions of this act requiring regular attendance shall not apply to any child who:

(2) Has been examined by an approved mental clinic or by a person certified as a public school psychologist or psychological examiner, and has been found to be unable to profit from further public school attendance, and who has been reported to the Board of School Directors and excused, in accordance with regulations prescribed by the State Board of Education."

This section of the code means only that when a parent elects to voluntarily withdraw a child from public school attendance, that parent may be excused from liability under the Compulsory attendance provisions of Section 1326 of the School Code when that parent acquires:

a. The approval of the local school board

b. The approval of the Secretary of Education

c. A finding by an approved clinic or public school psychologist or psychological examiner that the child is unable to profit from further public school attendance.

Thus, Section 1330(2) does *not* mean that a school district or intermediate unit, contrary to the parent's wishes, can terminate or in any way deny access to a free program of public education to any mentally retarded child.

### III.

During the course of the PARC case, it became apparent that many pre-school programs of education and training in Pennsylvania were being operated by the Departments of Education and Welfare for typical children, while few if any comparable programs existed for mentally retarded children. In light of this information, the Amended Consent Agreement has required us, and you have received, an interpretation of the definition of the phrase "children of school age" as used in Section 1371(c) of the School Code as set forth below:

The term "exceptional children" shall mean children of school age who deviate from the average of physical, mental, emotional or social characteristics to such an extent that they require special educational facilities or services and shall include all children in "detention homes."

The phrase "children of school age" as used in Section 1371 means children aged 6 to 21. This phrase also means all mentally retarded children who have reached the age less than 6 at which pre-school programs are made available to other children either by the Department of Education through any of its instrumentalities (e.g. local school districts or intermediate units) or by the Department of Welfare through any of its instrumentalities. This construction should insure that pre-school programs are equally available in Pennsylvania to mentally retarded and typical children, less than 6 years of age.

## IV.

(A) You have also requested an interpretation of the term "brain damage" as used in Section 1376 of the School Code. This interpretation is compelled by paragraph 55 of the Amended Consent Decree which qualifies the definition of "Brain Damage." See Part IV, subpart (B) *infra*. Section 1376 of the School Code provides, in relevant part:

(a) When any child between the ages of six and twenty-one (21) years of age resident in this Commonwealth, who is blind or deaf, or afflicted with cerebral palsy and or brain damage and/or muscular dystrophy, is enrolled, with the approval of the Department of Public Instruction, as a pupil in any one of the schools or institutions for the blind or deaf, or cerebral palsied and or brain damaged and or muscular dystrophied, under the supervision of, subject to the review of or approved by the Department of Public Instruction, in accordance with standards and regulations promulgated by the Council of Basic Education, the school district in which such child is resident shall pay twenty-five per centum (25%) of the cost of tuition and maintenance of each child in such school or institution as determined by the Department of Public Instruction, and the Commonwealth shall pay, out of funds appropriate to the Department for special education, seventy-five per centum (75%) of the cost of their tuition and maintenance as determined by the Department.

Based on expert testimony in the PARC case, and in part on the legislature's desire to provide for all exceptional children who reside in Pennsylvania, the term "brain damage" as used in this section and as further defined in the Board of Education's "Criteria for Approval of Reimbursement" includes thereunder all mentally retarded persons. Accordingly, there should now be available to them tuition for day school and tuition maintenance for residential school up to the maximum sum available for day school or residential school, whichever provides the program of education and training more appropriate to the mentally retarded child's learning capacities.

(B) As noted above, paragraph 55 of the Amended Consent Agreement also relates to the definition of brain damage. That paragraph provides:

"Any child who is mentally retarded and who also has another exceptionality or other exceptionalities whether blind, deaf, cerebral palsied, brain damaged, muscular dystrophied or socially or emotionally disturbed, or otherwise, *irrespective of the primary diagnosis* shall be considered mentally retarded for purposes of the Agreements and Orders herein."

This mental retardation in any degree qualifies a child for admission to a free public program of education appropriate to that child's capacities regardless of the nature and extent of any accompanying or primary exceptionality that child might have.

However, a brain damaged child who does not suffer some degree of mental retardation is not covered by the amended Order and Consent Agreement of the PARC case.

## V.

Section 1372(3) of the School Code, with regard to homebound instruction, provides in relevant part:

"Special classes of schools established and maintained by school districts . . . If . . . it is not feasible to form a special class in any district or to provide such education for any (exceptional) child in the public schools of the district, the Board of School Directors of the district shall secure such proper education and training outside the public schools of the district or in special institutions, or by providing for teaching the child in his home . . ."

The Amended Consent Agreement requires us to determine and you have asked, whether, under this section, homebound instruction may be denied to a mental retarded child because no physical disability accompanies the retardation or because retardation is not considered to be a short term disability. You are hereby advised that such a denial may not be made under this section. It is obvious from reading Section 1372(3) that homebound instruction is one of the options available to a school district where placement in a regular public school class is not possible. For a given mentally retarded child, homebound instruction may be the only appropriate method for providing the free public program of education and training to which that child is entitled.

In this regard, we refer you to Attorney General's Opinion No. 137 issued on July 6, 1972 which set forth the procedure for the assignment of exceptional children to special education programs under Section 1372 of the School Code.



That Opinion recognizes, in accordance with the PARC decision, that among the alternative programs of education and training required by statute to be available, placement in a regular public school class is preferable to placement in a special public school class, and placement in a special public school class is preferable to placement in any other type of program of education and training. This rationale leads us to conclude that homebound instruction is the least preferable of the programs of education and training administered by the Department of Education, and a mentally retarded child should not be assigned to it unless it is the program most appropriate to the child's capacity. Furthermore, an assignment to homebound instruction should be re-evaluated not less than every three months (90 days from the first date on which the child receives education and training in his home) and notice of the re-evaluation and an opportunity for a hearing in regard thereto should be accorded to the child's parent or guardian as set forth in the Court's Order of June 18, 1971.

## VI.

Section VI of this Opinion is in response to the request of the Amended Consent Agreement for an interpretation of Section 1375 of the School Code, and your request as to the effect of such an interpretation on the determination of which of your departments is now or will be charged with the responsibility for providing a free program of public education to all mentally retarded children in Pennsylvania. Section 1375 with regard to the exclusion of children from public schools, provides:

"The State Board of Education shall establish standards for temporary or permanent exclusion from the public school children who are found to be uneducable and untrainable in the public schools. Any child who is reported by a person who is certified as a public school psychologist as being uneducable and untrainable in the public schools, may be reported by the Board of School Directors to the Superintendent of Public Instruction and when approved by him in accordance with the standards of the State Board of Education, shall be certified to the Department of Public Welfare as a child who is uneducable and untrainable in the public schools. When a child is thus certified, the public school's shall be relieved of the obligation of providing education or training for such child. The Department of Public Welfare shall thereupon arrange for the care, training and supervision of such child in a manner not inconsistent with the laws governing mentally defective individuals."

Because all children are capable of benefiting from a program of education and training, Section 1375 means that insofar as the Department of Public Welfare must "arrange for the care, training, and supervision" of a child certified to it, the Department of Public Welfare must provide a program of education and training appropriate to the individual capacities of that child. This section further means that when it is found, on the recommendation of a public school psychologist and upon the approval of the local board of school directors and the Secretary of Education (as reviewed in the due process hearing contemplated by the Court's Order of June 18, 1971), that a mentally retarded child would benefit more from placement in a program of education and training administered by the Department of Public Welfare than from any program of education and training administered by the Department of Education, the child should be certified to the Department of Public Welfare for timely placement in a program of education and training.

It is the responsibility of the Secretary of Education to assure that every mentally retarded child is placed in a program of education and training appropriate to the child's individual capacities. To this end, the Secretary of Education with the cooperation of the Department of Public Welfare should require reports of annual census and evaluation under Section 1371(2) so that he shall be informed as to the identity, condition and educational status of every mentally retarded child within the various school districts of the commonwealth. If it appears that the provisions of the School Code relating to the proper education and training of mentally retarded children have not been complied with or that the needs of mentally retarded children are not being adequately served by programs of education and training administered by the Department of Public Welfare, the Department of Education should take those steps necessary to provide such education and training, as it is authorized to do pursuant to Section 1926.

199a



The Court Order of June 18, 1971, requires notice to the parent or guardian and an opportunity for a hearing with regard to the significant change in educational assignment which occurs when a child is excluded from programs conducted by the Department of Education and is certified to the Department of Public Welfare. With the cooperation of the Department of Education, the same notice should be accorded the parents or guardian of a mentally retarded child with regard to any change in educational assignment among and between the various programs of education and training administered by and within the Department of Public Welfare. Not less than every two years, the assignment of any mentally retarded child to a program of education and training administered by the Department of Public Welfare should be re-evaluated by the Department of Education and upon such re-evaluation, notice and an opportunity to be heard should be accorded the parents or guardian of the child in accordance with the Court Order of June 18, 1971.

## VII.

The final section of this opinion deals with paragraph 3(v) of the amended stipulation in the PARC case, issued on February 14, 1972, which provides:

"There shall be no change in the child's educational status without prior notice and the opportunity to be heard as set forth herein, except that in extraordinary circumstances the Director of the Bureau of Special Education, upon written request to him by the district or intermediate unit setting forth the reasons therefor and upon notice to the parent may approve an interim change in educational assignment prior to the hearing in which event the hearing will be held as promptly as possible after the interim change. The Director shall act upon any such request promptly and in any event within three (3) days of its receipt."

It has been asked whether this provision is subordinate to Section 1318 of the School Code dealing with suspension and expulsion of students, as set forth below:

"Every principal or teacher in charge of a public school may temporarily suspend any pupil on account of disobedience or misconduct, and any principal or teacher suspending any pupil shall promptly notify the district superintendent or secretary of the board of school directors. The board may, after a proper hearing, suspend such child for such time as it may determine, or may permanently expel him. Such hearings, suspension or expulsion may be delegated to a duly authorized committee of the board."

It must be recognized that the education of mentally retarded children will create problems that, in a typical child situation, would be governed by Section 1318. However, the suspension of a mentally retarded child under the same circumstances might amount to a punishment for a ramifications of the very disability which a public school program of education is attempting to remedy. To avoid such a result, we must first conclude that a suspension or expulsion pursuant to Section 1318 is a change in educational assignment which would, except as provided below, require notice and a due process hearing.

Acknowledging, however, that a disciplinary problem with a mentally retarded child may be so immediate or severe as to require summary action, the parties in the PARC case agreed to the above stipulation. Thus, in those cases which warrant immediate action, and after the approval by the Director of the Bureau of Special Education, an interim change in the educational assignment of a mentally retarded child, in the form of suspension or expulsion, may be made pursuant to Section 1318, so long as there is a hearing as promptly as possible after the interim change.

We have rendered this opinion relevant to the PARC case with the hope of implementing both the letter and the spirit of the Amended Stipulation and Consent Agreement. I would like to take this opportunity to again commend both of you for your efforts to improve the lives of mentally retarded children in the Commonwealth of Pennsylvania.

Very truly yours,

LARRY B. SELKOWITZ,  
Deputy Attorney General.  
ISRAEL PACKEL,  
Attorney General.

## Appendix D-2

## OFFICE OF THE ATTORNEY GENERAL

## OFFICIAL OPINION NO. 56

1. Mentally retarded children in residential mental retardation facilities licensed by the Department of Welfare and in residence as interim care placements must receive a public school program of education.

2. Mandates of *PARRC* require that the Department of Welfare no longer secure education for interim care children from schools which do not adhere to the regulations for special education of the State Board of Education.

3. A private school approved by the Department of Education for the education of the mentally retarded provides a program which satisfies the requirements of the *PARRC* case.

COMMONWEALTH OF PENNSYLVANIA,  
OFFICE OF ATTORNEY GENERAL,  
Harrisburg, Pa., August 1, 1973

Hon. HUBERT WOHLGEMUTH,  
Secretary, Department of Public Welfare,  
Health and Welfare Building  
Harrisburg, Pa.

and  
Hon. JOHN C. PEEBLES,  
Secretary, Department of Education,  
Education Building,  
Harrisburg, Pa.

DEAR SECRETARY WOHLGEMUTH and PEEBLES: As you know, the continuing implementation by your Departments of the Amended Order Stipulation and Consent Agreement of the *PARRC* Case is being monitored by the Federal Court through monthly Masters' Hearings. As a result of the discussions held at recent hearings, the Master has directed this office to clarify the Commonwealth's position relating to the education of mentally retarded children who are residents of interim care facilities under the control of the Department of Welfare. The specific question is, "What educational standard must be followed for mentally retarded children in residential mental retardation facilities subject to licensing by the Department of Welfare?"

It is my opinion and you are hereby advised that such children must receive a public school program of education either directly from the school district or intermediate unit in which the facility is located or from an approved private school.<sup>1</sup> The regulations in Section 5151(c) of the Department of Public Welfare Manual direct private licensed facilities to "arrange for children of school age to attend classes in a public or private school system or provide an organized educational program staffed with personnel qualified to organize and conduct an educational program at least equal to that provided in the public school system."

This regulation creates four educational options for children in such a facility:

1. Attend a public school
2. Attend a private "approved" school
3. Attend a private licensed school
4. Attend a residential program equal to a public school program

Options 1, 2, and 4 require a program that conforms to the State Board of Education Regulation for Special Education (22 Pa. Code § 13) and the standards promulgated pursuant thereto. An "Option 3" placement would only require a program that conforms to the Regulations of the State Board of Private Academic Schools (22 Pa. Code § 51), a less demanding standard than that provided by State Board of Education Regulations.

However, the *PARRC* Case has removed Option 3 at least as it applies to children who are under the care and control of the Commonwealth by virtue of their placement in a private licensed facility for the mentally retarded.

Under both paragraph (g) of the Amended Order of the *PARRC* Case (issued on May 5, 1972) and Section II of Attorney General's Opinion No. 35 (issued on

<sup>1</sup> This opinion deals with the obligation to provide an educational program and does not speak to the issue of responsibility for the tuition to be paid for that program.

April 23, 1973), the Commonwealth must provide access to a free public program of education appropriate to the learning capacities of the mentally retarded child involved. The requirement of a public school program can only be met by an institution which operates in conformity with the State Board of Education Regulations. Private academic schools operating under the licensure of the Board of Private Academic Schools, regulations do not meet this standard and therefore do not have an appropriate program to offer. Therefore the Department of Public Welfare must immediately notify all interim care facilities that they can no longer claim use for the education of mentally retarded, interim care children through a private academic school, but must make such arrangements with the local public school officials.

In the case of a private licensed facility which is also a private academic school, it can no longer lawfully provide a program of education to interim care children unless it first meets the standards of, and is approved by, the Department of Education applying the rules and regulations for special education of the Board of Education.

In order to afford all interested educational institutions the opportunity to provide the educational programs prescribed by the *PARC* case and this Opinion, the Department of Education is currently implementing procedures for the approval of private schools for the mentally retarded. Approval of a private school under the review procedures as a school for the mentally retarded will enable children who are currently claimed to be placed in such schools in satisfaction of the educational requirements of the *PARC* Amended Order, Stipulation and Consent Decree.

Sincerely yours,

LARRY B. SUKOWITZ,  
Deputy Attorney General,  
ISRAEL PERKIN,  
Attorney General.

### Appendix D-3

#### OFFICE OF THE ATTORNEY GENERAL

#### OFFICIAL OPINION No. 69

Department of Education: Policy of this Commonwealth. Child's residence that of his parents or guardian. Non-resident children entitled to education. District of residence liable for tuition. Commonwealth may pay tuition in some cases. Non-Pennsylvania children to be paid by institution. Parent who waives rights liable for tuition.

1. Public policy of this Commonwealth is that any child living within the State is entitled to attend the public schools. (24 P.S. 13-1306)

2. A child is resident of the district in which his or her parents or guardian resides. (24 P.S. 13-1302)

3. Non-resident children are entitled to attend the public schools, with or without tuition, as that board may determine.

4. School district of child's residence liable for tuition payment to district which educates the child. (24 P.S. 13-1307 and 13-1308)

5. Commonwealth pays tuition for Pennsylvania children whose district of residence cannot be determined.

6. Tuition for non-Pennsylvanians to be paid by the institution, who should seek to payment from parents or guardian. (24 P.S. 13-1308)

7. Under *PARC* parents who waive right to free public program of education must bear the tuition expenses.

COMMONWEALTH OF PENNSYLVANIA,  
OFFICE OF ATTORNEY GENERAL,  
Harrisburg, Pa., October 11, 1973.

HON. JOHN C. PETERS,  
Secretary, Department of Education, Commonwealth of Pennsylvania,  
Harrisburg, Pa.

DEAR SECRETARY PETERS: In conjunction with and as a result of the Right to Education Program in Pennsylvania, serious problems concerning the residency of certain children, for tuition purposes, have arisen. Although many different questions have been posed, they all revolve around the following:

What entity is responsible for the educational expenses of an institutionalized child who does not reside in the district in which the institution is located?

My opinion, of which you are hereby advised, on this and related questions is set forth in the material below, and should be adhered to by your Department when calculating tuition liability for the school districts of Pennsylvania.

#### I. GENERAL PROVISIONS

In general terms, the public policy of the Commonwealth is that any child living within the State is entitled to attend the public schools. This includes children placed in public or private children's institutions. The burden for the educational expense of a child being educated by the public school system is determined by statute, Article XIII of the School Code, 24 P.S. 13-1301 et seq.

With regard to children's institutions, including orphan asylums, homes for the friendless, children's homes, or other institutions for the care or training of orphans or other children, including institutions for the mentally retarded, the following rules and guidelines apply for children receiving public education:

1. "A child shall be considered a resident of the school district in which his parents or the guardian of his person resides," 24 P.S. 13-1302. Comment: This provision is important in determining under other sections of the School Code the liability for the education expense of the child.

2. "Every child being a resident of any school district between the ages of six and twenty-one years may attend the public schools in his district, subject to the provisions of this act," 24 P.S. 13-1301. Comment: A child whose parents live in district X, who lives in a children's institution in district X, is entitled to receive a free public education.

#### II. NON-RESIDENT CHILDREN

As to non-resident children in a children's institution receiving a public education, the following rules and guidelines apply:

1. The board of school directors of any school district in which there is located a children's institution shall permit any non-resident child therein to attend the public schools either with or without tuition as the board in its discretion may determine. 24 P.S. 13-1306. Comment: This section and its additional provisions make clear that a child in a children's home is entitled to a public education.

2. The school district from which a child in a children's institution is a local resident is liable for the tuition expense of that child's public education, 24 P.S. 13-1307 and 13-1308. Comment:

(a) *A child being in an institution in district X whose parents live in district Y.* District Y is responsible for the child's public education tuition expense. District X could either accept the child without tuition, or it could set a tuition which district Y must ultimately pay.

(b) *Same as in (a) above, except that sometime after the child is placed in the institution, the parents move to district Z.* The legal residence of the child follows his parents to district Z which becomes responsible for his public education tuition.

3. The tuition for public education for any child placed in a children's institution shall be paid by the Commonwealth at the request of the school district, when the Secretary of Education determines that the child has a legal residence in Pennsylvania which cannot be fixed in any particular district, 24 P.S. 13-1308. Comment:

(a) *The child is placed in an institution in district X; the parents live in district Y, then the parents move so that their whereabouts are unknown.*

When the child was placed in the institution, he had a legal residence in district Y which was responsible for his public education tuition. When the parents left district Y and disappeared, the child was no longer a legal resident of that district, and the district was not liable for the tuition. The child would nevertheless still be a legal resident of Pennsylvania and the Commonwealth would pay to district X the tuition. District X, however, has the option of not requesting tuition from the Commonwealth.

The same rules apply if the parents die and no relative or guardian is found within the State. Should one be found outside of the Commonwealth, the Commonwealth would pay the tuition until such time as a child is removed.

(b) *The child is abandoned and taken in by an institution.* The child is in effect a ward of the state and the Commonwealth shall pay the tuition. The Commonwealth shall also make every effort to identify and locate the parents.

4. The educational expense for children received from outside of Pennsylvania resident is liable for the tuition expense of that child's public education. 24 P.S. 13-1308. Comment:

(a) All children within the Commonwealth must be educated. While the Compulsory School Attendance law refers only to children having a legal residence and migratory children, 24 P.S. 13-1327, it is the clear intent of 24 P.S. 13-1306 that children in children's institutions are *entitled* to attend the public schools. Such children would include those accepted from parents having an out of state legal residence.

The institution is responsible for the public education tuition of out of state children. Therefore, the institution should make arrangements with the parents for the child's educational expense before accepting the child.

If the out of state parents refuse to pay the situation, the institution must bear the expense.

(b) *A child is placed in an institution in district X, parents reside in district Y; parents then move to a known address in another state.* If the parents maintained legal custody of the child when they placed him in the care of the institution, then the parents are liable for the tuition. The legal residence of the child follows his parents to the out of state address. If the parents refuse to pay the tuition, then the institution is responsible for the tuition expense. The institution has the right in such a case to take action against the parents under the Revised Uniform Reciprocal Enforcement of Support Act, (62 P.S. 2403-1 et seq.) or other means for reimbursement for the tuition expense.

If the parents move into Pennsylvania, then the school district in which they reside must pay the tuition.

In these rules and guidelines, reference to parents means the adult legally responsible for the child.

#### 5. PARC Decision

Under the PARC decision, mentally retarded children may be placed in private institutions as part of their public education when the school district is unable to provide facilities for the children. In such circumstances, the school district must pay the educational expenses.

Where both public and private facilities are available, and the parents waive their right to a public program of education and place the child in the private institution, the parents will be responsible for the child's education expense; not the school district.

Sincerely,

LARRY B. SELKOWITZ,  
Deputy Attorney General  
Israel Packel,  
Attorney General.

#### APPENDIX D-4

#### OFFICE OF THE ATTORNEY GENERAL OFFICE OPINION NO. 73

DEPARTMENT OF WELFARE — PLACEMENT OF MENTALLY RETARDED CHILDREN IN WELFARE FACILITIES — EDUCATIONAL ASSIGNMENTS — DUTY TO COOPERATE IN PLANNING — DUTY TO PLACE

1. Department of Public Welfare must cooperate in determining the appropriate placement of a child who can no longer benefit from a public school program.

2. Department of Public Welfare must place a mentally retarded child in accordance with a hearing officer's recommendations.

3. In deciding on the placement, the Department must consider child and family convenience, nature and size of the facility and the availability of space.

4. Department must, when no other placement is available, place the child into an appropriate facility.

COMMONWEALTH OF PENNSYLVANIA,  
OFFICE OF ATTORNEY GENERAL,  
Harrisburg, Pa., October 30, 1973.

HON. HUGHEN WOLFE, JR.,  
Secretary, Department of Public Welfare,  
Health and Welfare Building, Harrisburg, Pa.

DEAR MRS. WOLFGARTHE: The first Administrative Appeal to the Secretary of Education of a due process hearing held pursuant to the amended Consent Agreement of the PARC Case raises the following question:

What are the duties of the Department of Public Welfare in regard to the placement of a child who has been certified by a school psychologist as being in need of a program which the public schools do not offer or who has been found by a hearing officer to be in need of a program which is available in a facility under the supervision or control of your Department?

It is my opinion, and you are so advised, that the Department of Public Welfare must cooperate with the school entity involved in determining the placement of a child who has been certified by a school psychologist as being in need of a program which the public schools do not offer. Further, the Department is under the legal obligation to place the child in accordance with the recommendation of a hearing officer when such recommendations are made.

Under the terms of the court's order, the Department of Public Welfare is a party defendant in the continuing implementation of the PARC Consent Agreement. In order to fulfill the Department's obligations under this order, the various segments of your Department should be directed to confer with local educational officials whenever a program under their auspices may be felt to be appropriate to the education and training needs of a particular child.

Secondly, when requested by local school officials, your Department must assist in the preparation of information about and plans for a particular child whom that school entity proposes to place in a program in which your Department is involved. It must be remembered that the Commonwealth's obligation under the PARC Case is first to find a public program for a child before turning to the private sector.

Also, when a hearing officer recommends that the child be placed in a program which is located under the supervision or control of the Department of Public Welfare, all steps must be taken to immediately comply with that recommendation, including the actual placement of the child by the Department of Public Welfare. Such a placement must take into account the convenience to the child and his or her family, the nature of the facility and the availability of places in the facility.

The continued cooperation of your Department, the local school districts, parents, and children will demonstrate your concern for every child's right to educational opportunities in Pennsylvania.

Very truly yours,

LARRY B. SIKOWITZ,  
Deputy Attorney General,  
ISRAEL PACKEL,  
Attorney General.

#### APPENDIX D-5

#### OFFICE OF THE ATTORNEY GENERAL [Openion No. 137]

#### ASSIGNMENT OF EXCEPTIONAL CHILDREN TO SPECIAL EDUCATION PROGRAMS

JULY 6, 1972.

To Honorable John Pillemer, Secretary, Department of Education,

You have asked us to determine what is the proper procedure for the assignment of exceptional children to special education programs under § 1372 of the Public School Code of 1959, as amended (72 P. S. § 13-1372), and specifically what role should be assigned to private schools providing such education.

We understand that it is expected that an increased number of exceptional children will be seeking "a free program of education and training" under the consent agreement and continuing in Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania Civil Action No. 71-42 in the United

Although the Department of Public Welfare, through Administrative Agreement, no longer has the responsibility to directly provide the education portion of an appropriate program, it must still act in such a way as not to deny any mentally retarded child access to free public program of education and training appropriate to that child's needs.

States District Court for the Eastern District of Pennsylvania (decided May 5, 1972) and we further understand that there is concern as to how existing private schools (some of which are collecting tuition fees from parents as well as receiving state funds under § 1376 of the School Code (24 P. S. § 1376)) will fit into the "new picture."

Section 1372(2) and (3) provide:

(2) Plans for Education and Training Exceptional Children. Each intermediate unit cooperatively with other intermediate units and with school districts shall prepare and submit to the Superintendent of Public Instruction on or before the first day of August, one thousand nine hundred seventy for his approval or disapproval, plans for the proper education and training of all exceptional children in accordance with the standards and regulations adopted by the State Board of Education. Plans as provided for in this section shall be subject to revision from time to time as conditions warrant, subject to the approval of the Superintendent of Public Instruction.

(3) Special Classes or Schools Established and Maintained by School Districts. *Except as herein otherwise provided, it shall be the duty of the board of school directors of every school district to provide and maintain, or to jointly provide and maintain with neighboring districts, special classes or schools in accordance with the approved plan. The Superintendent of Public Instruction shall superintend the organization of such special classes and such other arrangements for special education and shall enforce the provisions of this act relating thereto. If the approved plan indicates that it is not feasible to form a special class in any district or to provide such education for any such child in the public schools of the district, the board of school directors of the district shall secure such proper education and training outside the public schools of the district or in special institutions, or by providing for teaching the child in his home in accordance with rules and regulations prescribed by the Department of Public Instruction, on terms and conditions not inconsistent with the terms of this act or of any other act then in force applicable to such children.*" (Emphasis added)

There can be no doubt from a reading of the above that the primary duty for providing special education services rests with the *school district* and then in the formulation of the Intermediate Unit Plan for educating exceptional children, the intermediate unit must look first to the school district.

The crucial question then becomes, To whom—in the formation of the plan—does the intermediate unit look to provide these services, if the local district cannot provide them? It is our opinion, and you are so advised that § 1372(3) answers that question by providing:

"If the approved plan indicates that it is not feasible to form a special class in any district \* \* \* (Emphasis added)

We construe that phrase, when read in conjunction with the previous language on "neighboring districts" and the subsequent reference to securing the services "outside the public schools of the district," to refer to the inability of the intermediate unit to provide special education in any district of the intermediate unit under § 1372(4) which provides:

(4) Classes for Exceptional Children. The intermediate unit shall have power and it shall be its duty to provide minimum, administer, supervise and operate such additional classes or schools as are necessary or to otherwise provide for the proper education and training for all exceptional children who are not enrolled in classes or schools maintained and operated by school districts or who are not otherwise provided for."

It is then, and only then, that the next phase of § 1372(3) becomes applicable.

The board of school directors of the district shall secure such proper education and training \* \* \* in special institutions \* \* \* .

We note that this interpretation of the law gives meaning to § 1372(2), i.e., the subsection conferring on the *intermediate unit* the duty to prepare a plan—subject to the approval of the Department of Education—for the education of all exceptional children. A contrary interpretation would establish a "ping-pong" game between the intermediate unit and the school district whereby once a determination has been made that the district cannot provide the necessary services, it is up to the *school district* to determine if the private school sector is available to provide such services. Such a procedure would in effect, make a nullity of § 1372(2) and prevent any meaningful planning by the intermediate unit.

We also note that this interpretation of the law harmonizes with the understanding reached for the Commonwealth in the Pennsylvania Association for Retarded Children case, cited above, and specifically paragraph 7 of the Consent Agreement which provides as follows:

7. It is the Commonwealth's obligation to place each mentally retarded child in a free, public program of education and training appropriate to the child's capacity, within the context of the general educational policy that, among the alternative programs of education and training required by statute to be available, *placement in a regular public school class is preferable to placement in a special public school class and placement in a special public school class is preferable to placement in any other type of program of education and training* (Emphasis added).

It must be stressed, however, that nothing in this opinion should be construed to mean that in determining the feasibility of establishing an intermediate unit program, under § 1372(f), consideration should not be given to the availability of existing private facilities and resources in the private school sector, especially when considerable public expense would be necessary to duplicate those resources. On the contrary, the plan should reflect a reasonable consideration of those factors in determining the most rational assignment of exceptional children to special education programs, taking into account the need expressed in PARC to "normalize" as much as possible the second experience of these children.

Finally, it must be emphasized that unless a parent clearly and knowingly waives his right to a "free program of education and training" under PARC, the *de novo* assignment to a private school will be lawful under that decision, if the private school, without the parent's consent, proceeds to make a charge to that parent over and above the payments received from the district and the Commonwealth. Should the private school have supplementary educational services or other services—e.g., non-educational services—to provide its students, then the parent should be advised of the availability of these services and of the charge for same, but such charges may not be made on a mandatory basis.

J. SHANE CREAMER,  
Attorney General

[Pa. B. Doe No. 72-1613 Filed August 18, 1972, 9:00 a.m.]

#### APPENDIX E-1

#### SAMPLED REPRESENTATION AT MASTERS MEETING

Representation	August 1, 1972	December 12, 1972	March 27, 1973	July 10, 1973	October 4, 1973
Department of Education	1	1	2		3
P A R C	9	9	7	6	7
Office of M R	2	2			5
Justice Department	1		1		1
Masters	2	2	1	2	2
Counsel, Philadelphia School District	1	1	1		
Philadelphia schools	2	4	1	1	3
Temple University	1				
I U No 23	1				2
I U No 16	1				2
Pittsburgh schools	3	3	3	2	1
Right to Education Office	1	4	5	2	2
Department of welfare		1	1		1
Governor's office		1	1		1
Neighborhood Legal Services		1			
I U No 4				3	
I U No 3				1	1
I U No 6				1	
I U No 5				3	
I U No 9				1	
I U No 25				1	
Gertrude Barber Center				16	
Erie City schools				2	
Polk State School and Hospital				1	
National Alliance of Businessmen				1	
Pittsburgh Federation of Teachers				1	1
I U No 29					5
I U No 15					2
I U No 14					1
I U No 12					4
University of Pennsylvania					3
United Cerebral Palsy					1
Allegheny Valley schools					7
Allegheny County Association of Special Education Teachers					1
Task force review Team					1
Total	25	29	23	44	58



## APPENDIX E 2

## RESPONSIBILITIES AND ACTIVITIES OF THE RIGHT TO EDUCATION OFFICE

The main responsibility of the Right to Education Office is to implement the Consent Decree and to render advice and assistance to the intermediate units and school districts to insure their full compliance with the Federal Court Order, which includes:

1. Receiving requests for due process hearings. A. Many must be returned because the form is not fully completed or the information is too sketchy for the parents to understand.

2. Assign hearing officers.

A. To insure that a hearing officer is not an employee or ever has been an employee of the school district or intermediate unit in which the hearing is to be held.

B. To insure that a hearing officer has never been a consultant to the school district or intermediate unit in which the hearing is to be held.

3. Advising school district, intermediate units and the Pennsylvania Association for Retarded Citizens (PARC) of the hearing officer assigned.

4. When the date, time and place of hearing is determined, advising the intermediate unit, school district, PARC and the local PARC office and send a copy of the due process letter to the hearing officer.

5. Monitor time constraints of due process hearing assignments and decisions as recorded in the consent agreement.

6. Assist in the training of hearing officers and keeping them informed by providing them with necessary information such as PARC appeals, appeal procedures, etc.

7. Monitor procedures for implementing the due process hearing and consent agreement in State Schools and Hospitals.

8. Receiving transcripts and hearing officers' decisions, keeping records and files and follow up on placements.

9. Monitor appropriateness of individual programs based on the recommendation of hearing officers or the evaluation team.

10. If hearing officers' decisions are appealed, preparing the exceptions, hearing officer's decision and transcript for delivery to the Secretary of Education.

11. When the Secretary's decision is received, sending by certified mail, return receipt requested, a copy to the parents or their attorney and to the school district or their solicitor and to PARC.

12. Maintain records for all due process hearings assigned, cancelled and completed, with separate files established for open and closed hearings.

*Hearing figures as of March 1, 1974*

Hearings requested	368
Number canceled	168
Number held	118
Number decisions received	106
Appeals to the secretary	15
Appeal decisions received from the secretary	11
Appeals to Commonwealth court	2
Appeals remanded back to the secretary by Commonwealth court	2

13. Receive agenda items from members of the State Task Force and set up agenda for the Chairman's approval.

14. Tape State Task Force minutes, prepare minutes and distribute to State Task Force members and members of the Local Task Forces, as per appendix 1.

15. Prepare a list of To Do's for the State Task Force members and other personnel given specific duties by the State Task Force.

16. Review all Local Task Force minutes received and distribute to State Task Force members.

17. Prepare and distribute all State Task Force memoranda to Local Task Force members.

18. Prepare items noted on Local Task Force minutes that should be brought to the attention of the State Task Force at their next meeting.

19. Attend Local Task Force meetings and make recommendations and/or suggestions are requested.

20 Monitor the procedures of Local Task Force and serve as liaison between the Local Task Forces and the State Task Force.

21 Monitor and file referral placement masters (Individual child records)

A Number identified through evaluation or re-evaluation..... 19, 167  
Number placed in educational programs..... 10, 071

Classes for severely and profoundly retarded, approximate... 2, 571  
Kindergarten, approximately ..... 3, 324  
Age 6-21, returnees to trainable and educable mentally retarded  
classes approximately ..... 4, 176

B Services were also being provided residents of State schools and hospitals and residents in private licensed facilities formerly under the department of welfare

Age 6-21, in State schools and hospitals, approximately ..... 3, 165  
in private licensed facilities, approximately ..... 4, 000

22 Prepare memoranda and/or letter for the Department of Education that pertain to the Right to Education Consent Agreement

23 Obtain and distribute attorney general's opinions pertaining to the Right to Education

24 Distribute appeals to hearing officers and others as requested

25 Distribute COMPET and COMPITE as requested, as well as all other materials regarding the Right to Education

26 Serve as coordinators and resource staff to various committees charged with assisting in long term planning and revision such as the COMPET Revision Committee

27 Monitor ease of usage of various forms contained in COMPITE and document changes recommended by field users.

28 Work with Division of Special Education Supervisors when requested to insure that the Right to Education policies are being followed.

29 Establish liaison among local school districts, intermediate units with MH MR base service units and Department of Welfare personnel.

30 Provide inservice for intermediate units, general educational agencies and private schools regarding due process procedures and the Consent Agreement.

#### APPENDIX F

##### GOVERNOR APPRAISALS DECISION

The following is the text of Governor Milton J. Shapp's speech given on Friday, May 12, 1972 to an audience of local and state educators which kicked-off the Right to Education implementation:

Today we embark upon a new era in the educational training of mentally retarded children. In the 1870's schools for the mentally retarded were, little more than dumping grounds for children with learning disabilities who bothered the regular class teachers and were, in many instances, merely the non-English speaking children of immigrant parents.

Today we reaffirm the commitment of the Commonwealth of Pennsylvania to provide every mentally retarded child in the State with a meaningful program of education and training no later than September 1972.

Pennsylvania has long been at the forefront of efforts to specially educate the mentally retarded. Unfortunately, Pennsylvania's effort has long been predicated upon the erroneous belief that only some mentally retarded children may benefit from a program of education and training. Accordingly from 1910 through the 1950's, programs funded by the Pennsylvania Legislature for the education of mentally retarded children were optional, leaving most mentally retarded children at home sentenced to a life of useless frustration. In the 1950's due to the effort of former Governor George Leader, Pennsylvania adopted a compulsory program of special education which mandated that every mentally retarded child in Pennsylvania capable of benefitting from school had to be there. Unfortunately, this perpetuated the notion that many mentally retarded children could not benefit from an education.

Therefore, through the 1950's and 1960's, only children with an I.Q. of at least 75 went to regular public schools. Mentally retarded children with I.Q.s ranging from 50 to 75 unfortunately labeled "educable" mentally retarded, were assigned to special education programs conducted by the Department of Education, as

were "trainable" mentally retarded children with IQs ranging roughly from 30 to 50. Profoundly retarded children with IQs of less than 30 were labeled "incurable" and assigned to the Department of Public Welfare for care and training.

This theory of separatism has proven a failure for most mentally retarded children.

In 1970, 45,000 educable retarded children and 6,000 trainable retarded children were in special education classes conducted by the Department of Education, and between 5,000 and 10,000 profoundly retarded children were "cared and trained" by the Department of Public Welfare, without even theoretical access to a program of education. Most would agree, however, that these approximately 50,000 participated in one of the finest programs in special education in any state in the United States. At least 50,000 mentally retarded children in Pennsylvania have a chance for a dignified self-sufficiency.

On January 7, 1971, the Pennsylvania Association of Retarded Children sued the Commonwealth of Pennsylvania. It challenged the dual school system, condemned the notion that many mentally retarded children could not benefit from an education and charged that as many as 100,000 mentally retarded children in Pennsylvania were being denied state constitutionally guaranteed right of access to a free public program of education and training. More specifically, PARC contended that the Pennsylvania statutes permitted and encouraged the exclusion of many children from the somewhat more meaningful programs of the Department of Education and their relegation to a life of dependency and care by the Department of Public Welfare. PARC also claimed that the admission of children to special school programs was being postponed on the ground that they could not benefit from those programs and that their continued attendance in such programs was being excused at the urging of frustrated parents on the ground that the children could no longer benefit from such programs. Even more troublesome, PARC claimed, was that children were being excluded, excused and postponed without the slightest due process, without notice of the action that the state proposed to take and for an opportunity to challenge it.

The Commonwealth could have defended this law suit vigorously, it could have resisted most of the relief sought by PARC and could have claimed, with justification, that it has one of the finest programs of special education in the United States. Such was not the commonwealth's response. We did not reply with an 1870 answer to a 1970 challenge. On October 7, 1971, the Commonwealth entered into a Consent Agreement with PARC. Our agreement was predicated upon something PARC has known for a long time: all mentally retarded children, I repeat, all mentally retarded children, are capable of benefitting from education and training. We agreed with PARC that two-thirds of all the retarded, with proper education and training, can achieve social and financial self-sufficiency and that the other one-third can achieve a significant degree of self-care.

Specifically, we agreed to immediately stop applying the School Code to exclude, excuse or in any way postpone the access of mentally retarded children to meaningful programs of education and training. We have guaranteed that the educational assignment of a child believed to be mentally retarded will not be changed from regular class to special class or from one type of program to another, without prior notice to the parents and an opportunity to question the proposed change in a full due process hearing. The responsibility for insuring that every child in Pennsylvania receives an education appropriate to that child's ability will henceforth rest where it should rest, with the Secretary of Education. While the Department of Welfare will continue to play a substantial role, their role will no longer be merely to care for the retarded children under their jurisdiction, but rather to provide a meaningful program of education and training which will be supervised and approved by the Secretary of Education. There will be no more 'welfare cases' in our approach to educating the mentally retarded.

Significantly, although PARC sought an equal educational opportunity for mentally retarded children between the ages of 6 and 21, we have agreed to provide such a program to children starting at the age of four in those school districts where a pre-school regular class program is available. This is based upon our firm belief that the earlier a mentally retarded child is exposed to a structured program of education and training, the more likely this child is to achieve social and financial sufficiency.

"Furthermore, we have agreed to provide home-bound instruction to those mentally retarded children who are unable to attend classes away from their homes and for whom private school or institutional placement would be inappropriate.

"Finally, we have established as an explicit educational policy in the Commonwealth of Pennsylvania that placement of a child in regular classes of the regular public school system is preferable to placement in the special classes of the public school system. Further, that placement of a mentally retarded child in a special class is preferable to any other educational assignment, such as institutional or private school placement. After all, it is the Commonwealth's responsibility to provide mentally retarded children with a 'free public program of education and training.' It is our firm conviction that the education of mentally retarded children in special classes within the public school system will provide them with the most normative setting possible, thereby appreciably enhancing their chances for social self-sufficiency.

Last week, a federal court in Philadelphia approved the consent agreement, saying: "We have absolutely no hesitation about approving the Agreement as fair and reasonable. . . approval means that retarded children who heretofore have been excluded from the public program of education and training will no longer be so excluded after September of 1972. This is a noble and humanitarian end in which the Commonwealth of Pennsylvania has chosen to join." Today, with the following Order (of the court) this group of citizens will have new hope in their quest for a life of dignity and self-sufficiency.

Before the Commonwealth can make good in its commitment and educate all of its retarded children, it must find them. This is the challenging job you are now preparing to tackle. The Department of Education and Welfare have been assigned joint responsibility for implementing our agreement with PARC and for compliance with the Order of the federal court. These departments will be joined in the effort by the Pennsylvania Association of Retarded Children. The Departments of Education and Welfare will embark upon COMPILE the Commonwealth's plan to identify, locate and evaluate all mentally retarded children. PARC's counterpart program is called CHILDHUNT. These programs represent the first attempt in the history of the United States that a state has launched a search for all of the children to whom it desperately wants to provide a program of education and training.

"COMPILE and CHILDHUNT will seek to identify and locate every child in this state who is under 21 years of age and who is thought to be mentally retarded but not now enrolled in an appropriate program of education and training. Once found, every mentally retarded child's individual level of ability will be evaluated with a view to placement in an appropriate program geared to the child's ability. Standards will be developed for providing his or her education. The major components of this process will be described to you later today.

To help direct and coordinate these efforts, we have established an Office of the Right to Education located in the Department of Education. Later today you will be meeting Joseph Lantzer who is the Director of this unit. Their job will be to help assist all of us to achieve the goal we have set out to accomplish together.

"This is a large and difficult undertaking. It has not been easy to put this plan together nor will it be easy to carry it out. We need your skills and energy and your patience as we embark on an effort for our mentally retarded children that the whole country is watching.

"With every step forward we take, we are establishing new standards for all states in the Union in bringing the retarded into the mainstream of society.

Indeed, it is even regrettable that we have not had more leadership in this area from the federal government, which increased support we will need to carry out these programs.

"I am personally proud that this Administration can be a part of this historic effort, and I ask each of you to help insure its success for all mentally retarded persons.

"Thank you."

#### APPENDIX G

#### INTRODUCTORY INFORMATION AND INSTRUCTIONS FOR THE RIGHT TO EDUCATION PLAN, MAY 1972

##### I. INTRODUCTION

The following information is provided to help clarify the requirements, implications and procedures to be followed in implementation of the Right to Edu-

cation Consent Agreement for mentally retarded children. The Right to Education Plan for fulfilling the consent agreement will be divided into two phases.

Phase I: COMPILE: Commonwealth Plan to Identify, Locate, and Evaluate Mentally Retarded Children (Completion date: June 30, 1972)

Phase II: COMPET: Commonwealth Plan to Educate and Train Mentally Retarded Children

The coordination required for such an extensive plan is complex and difficult. By necessity, therefore, the introduction of the COMPILE and COMPET materials will be simple and process-oriented. Those to be directly involved in the daily implementation of the plan will receive extensive in-service training through workshops given by the 29 intermediate units.

It is requested that each of these direct participants (per the Guidelines attached) address their questions and inquiries to the leaders of the in-service workshops. This will permit a more thorough introduction of the attached materials at today's meeting.

The plan is far-reaching and presents the special educator in Pennsylvania with new responsibilities and challenges. The historic court case has resulted in a specific agreement which the Commonwealth must fulfill immediately. However, the long range aspects of the agreement are less precise. It is, therefore, the determined intent of the Departments of Education and Public Welfare that the immediate benefits of fulfilling the agreement will provide the basis for a permanent, comprehensive process for providing education and training for mentally retarded children.

Thus, the plan addressed by these and subsequent materials, represents an important point of departure, one which will determine the success of future strides to improve the special education process in Pennsylvania.

Your close review and patronage of these materials is requested.

## II. BACKGROUND

On January 7, 1971, a suit was filed in Federal District Court, Philadelphia, Pa., against the Commonwealth of Pennsylvania on behalf of the Pennsylvania Association for Retarded Children and 12 mentally retarded children. The three main points in the case are as follows: (1) the Commonwealth has excluded, excused and postponed enrollment of mentally retarded children, (2) the opportunity for due process was not afforded to these excluded and postponed mentally retarded children before any change was made in their educational status and every two years in the course of their education and (3) there are mentally retarded children in the Commonwealth who are not receiving a free public program of education and training.

On October 7, 1971, the Commonwealth entered into a consent agreement with the Pennsylvania Association for Retarded Children. In the agreement, the Commonwealth consented to the following actions: (1) to cease and desist from applying those sections of the school code which are exclusionary in nature, (2) to offer a due process hearing to the parents of every mentally retarded child before any change is made in his educational status and (3) to provide a free public program of education and training to all those mentally retarded persons who have not received such services in the past. The Departments of Education and Public Welfare have been assigned joint responsibility to comply with stipulations that require multi-agency and broad private sector involvement.

### A. Phase I: COMPILE

The COMPILE is the first phase in providing every mentally retarded child with a free public program of education and training. The objectives of this phase are: (1) to identify and locate every child in the Commonwealth who is under 21 years of age, thought to be mentally retarded and not enrolled in a program of education and training and (2) to ascertain every mentally retarded child's level of functioning in all areas of development.

The major components of COMPILE are: (1) a massive two-month statewide media campaign. This campaign will include activities such as TV and radio addresses by the Governor and the employment of a single telephone number, in service 24 hours, toll free, for reporting children who are not in a program of education and training, (2) an exhaustive search of the records and files of all public and private agencies and facilities which provide services to children, and (3) a preliminary screening of all identified and located children to determine the necessity for an in-depth evaluation, and (4) a comprehensive, in-depth, multi-disciplinary evaluation of each child's level of functioning in areas of motor,

perceptual motor, communication skills, conceptual, cognitive and intellectual development as well as self-care, self-help, social interaction and independence.

The plan is designed in keeping with the findings of the court order: "that all mentally retarded persons are capable of benefiting from a program of education and training—" and that "it is the Commonwealth's obligation to place each mentally retarded child in a free public program of education and training appropriate to the child's capacity."

At the conclusion of Phase I, by June 30, 1972, we will have identified, located and evaluated every mentally retarded child under the age of 21 who is not enrolled in a program of education and training. The results of the evaluation will be used in determining an appropriate child placement and a continuing diagnostic, prescriptive and psycho-educational plan to meet the needs of the child. This plan will be developed in Phase II, COMPET.

### Phase II COMPET

COMPET will provide standards and procedures for providing education and training to mentally retarded children. That education and training will be consistent with the children's needs as identified by an in-depth evaluation of each child. (The standards will specify the recruiting, hiring and training procedures necessary for supplementing program staff to meet the identified needs of the child and to deliver a proper education upon the opening of school in September, 1972.) The standards will include teacher/pupil ratios, hours of instruction, curriculum, facilities, teacher qualifications and information sources for teachers.

Following is a procedural description of the COMPILE/COMPET process to be implemented. This process is also summarized in Part IV by a process diagram.

### III. GUIDELINES FOR IMPLEMENTATION OF THE COMPILE/COMPET PROCESS

Task No.	Responsibility	Process task description
100	PDE, DPW	To establish a State task force consisting of the State departments of education and public welfare, other State departments and groups, and representatives of the consumer citizens groups.
200	State task force	To provide information, make contacts and delineate functions necessary for the implementation of COMPILE and COMPET, including consumer/citizen group cooperation and input.
300	Governor	Announce the signing in Federal court of the consent and due process agreements concerning the right to education for all mentally retarded children and the milestones (dates) for implementing the agreements.
400	PDE, State task force	Assure compliance with agreements by all related agencies.
500	PDE	Initiate and sustain (for a 2-month period upon completion of task 3) a citizens' alert appeal to help find a child program. This will include printed flyers to be distributed in liquor stores and to be sent to individual local education agencies (LEA) to be carried home by children.
600	PDE, DPW	Initiate announcements to the media regarding the right to education and specifically describe the referral procedures (telephone, local and 24 hour service) to be used.
700	PDE	Initiate use of the 24 hour telephone referral service.
800	PDE	Forward telephone referral forms (local) to LEA administrators and intermediate unit directors via a school administrator's memorandum and instruct each LEA and IU to establish appropriate recording procedures with staff responsible for use of the forms.
900	PDE	Invite all concerned departments, agencies, personnel and the general public to attend a meeting in the forum to provide an overview on phase I (COMPILE) and phase II (COMPET) of the plan and to discuss implementation milestones and timeline.
1000	PDE	Conduct meeting to disseminate COMPILE/COMPET introductory packet and to provide participants with an overview on the implications and requirements of the consent and due process agreements.
1100	PDE	Provide IU directors of special education with training on use of guidelines to instruct IU, LEA, MH MR and other personnel on use of the evaluation form, IU referral, placement master and to discuss general aspects of implementation phases I and II of the plan.
1200	LEA	Record appropriate information on the telephone referral form (TRF) for each child referred between the ages of 4 and 21.
1300	LEA, IU, PDE	Forward all telephone referral forms to the appropriate IU on a weekly basis. Keep 1 copy for a confirmation file and record on this copy the date the TRF was sent to the IU.
1400	IU	Provide inservice training to appropriate IU, LEA, MH MR and other personnel directly involved in the COMPILE process regarding use of the evaluation form and the IU referral placement master (RPM).

See footnotes at end of table.

## III GUIDELINES FOR IMPLEMENTATION OF THE COMPILE COMPET PROCESS--Continued

Task No	Responsibility	Process task description
15.0	LEA administrator	Submit to the IU executive director copies of the census from about all children identified under the annual school census (sec 1351 of the school code) who are not enrolled in school, DERS 143 (11 70) (1) Include all children ages 4 to 18 (2) Include all children ages 19 to 21, including high school graduates (3) Include all children less than 4 years old thought to be mentally retarded where programs are operated for these age groups by school districts
15.1	IU executive director	Establish and setup a local task force consisting of the IU executive director, the respective school administrator, (LEA administrator) the local county MH MR administrator and a consumer citizen representative including the local association for retarded children
16.0	LEA administrator	Prepare a letter to be carried to each home by all attending school pupils which states the desire of the school district to locate all children except high school graduates, between the ages of 4 to 21 not in school
17.0	LFT LEA and IU administrators	Meet with the members of representative community groups (civic organizations, agencies and media) for purposes of outlining the reasons for identifying and locating all children not in school and soliciting their cooperation
18.0	do	Request assistance of all representative groups in the communities for surveying the community to identify children between the ages of 4 to 21 not in school
19.0	IU	Transfer data from each TRF onto the PPM. This data should permit completion of pt. 1 of the RPM. Secure any additional information per child necessary to complete pt. 1
20.0	do	Record the respective IU number and child's number (serially per receipt) on the TRF and file the TRF according to source (PDE, IU number of LEA number) in a file marked TRF, recorded
21.0	PDE	Forward necessary sets of the RPM to LEA's, IU's, DPW, county MH MR State schools and hospitals, interim care facilities, public licensed facilities and growth and development centers for use in searching records to identify children MR or thought to be MR and who are not presently in a program of education and training
22.0	LEA, IU, MH MR, State schools and hospitals, G and D centers private agencies	Conduct a search of all program records for all children with birthdates from 1951 forward for the purposes of identifying all children mentally retarded or thought to be mentally retarded who currently are not enrolled in a program of education and training. For these children who are not enrolled, complete pt. 1 of the RPM. Search all available records. Upon completion of pt. 1, forward it to the appropriate IU
23.0	IU Nos. 2, 16, 23	Conduct selective house-to-house canvassing to identify and locate children using the 1969 exceptionality census form. Transfer census form data to the RPM
24.0	LEA administrator	Determine according to current school records the number of persons who are mentally retarded under 21 and not enrolled in a program of education and training. Forward the above information to the appropriate IU directors of special education by May 26, 1977.
25.0	IU director of special education	Ascertain the number of persons who are found to be mentally retarded as a result of implementing COMPILE and record on the RPM as of 60 days after implementation. If the total found to be mentally retarded as reported on the RPM exceeds the number reported by the LEA to the IU director of special education by more than 30 percent there is need for a door-to-door census
26.0	IU psychologist	Review each RPM and determine according to data under pt. 1, which children should be screened before receiving indepth evaluations. For those children, who per complete pt. 1 data, are in school or definitely not retarded, screening will not be necessary and this must be so indicated under pt. 11 for these children
27.0	do	If pt. 1 RPM data is complete for a given child, and the child appears according to the data to be unquestionably in need of an indepth evaluation, this should be so indicated on the RPM under pt. 11. Skip tasks 28, 30, 31, 32, 33, 34.
28.0	do	If pt. 1 RPM data is 2 or more years old, incomplete or the mental retardation status of the child is questionable, a home visit or parental (guardian) contact should be made and so indicated on the RPM pt. 11. This contact will constitute the screening process and is necessary before the child may be recommended for an indepth evaluation
29.0	IU director of special education	Review the COMPILE procedures and set up a chart wherein each of the LEA's are listed according to their screening and evaluation capabilities (whether or not they have homevisit or psychological staff respectively)
30.0	do	Verify which LEA (by school dist. 1 code) is to do the necessary screening (per 28.0). This should agree with the LEA code number shown on pt. 1 of the RPM for the child.
31.0	IU psychologist	Refer to the chart described above (29.0) to determine if the LEA (300) has screening capability
32.0	do	If the LEA does have screening capability, remove the screening copy for the child from the RPM and forward it to the respective LEA administrator. If the LEA does not have screening capability per the list of 29.0 ignore task 33.0 and complete the necessary child screening
33.0	LEA administrator	Forward the screening copy from 32.0 to the appropriate individual within the LEA for child screening. Insure completion of the screening process by this individual and return of the screening copy with the necessary data to the respective IU psychologist

See footnotes at end of table

## III. GUIDELINES FOR IMPLEMENTATION OF THE COMPILE COMPET PROCESS Continued

Task No	Responsibility	Process task description
34.0	IU psychologist	Record the screening results onto the RPM, pt. II. Review this data and determine if the child requires an in-depth evaluation to verify his status as mentally retarded. If in-depth is not required, because the child is unquestionably not mentally retarded, so indicate on pt. II and consider data recording for that child complete.
35.0	do	For the children who are to receive an in-depth evaluation, refer to the child from 29.0 to determine if the respective LEA as shown by code under pt. II of the RPM has the capability (a psychologist) to handle such an evaluation. If the LEA does have such a capability, go to task No. 38.
36.0	do	When the LEA does not have evaluation capability, the in-depth will have to be done by the IU psychologist. Such evaluation will be on a priority basis according to the data under pt. I of the RPM for each child.
37.0	do	Determine chronological priority by referral date, and then take each child's priority number and divide it by the number of IU psychologists available for child evaluation. For example, if the child is 16th in line for evaluation according to his referral date and 2 psychologists are available, it will be 8 evaluation days before the child is seen. If this number of evaluation days causes the date for the child's evaluation to go beyond June 30, contact the PDE to indicate excessive backlog and secure the services of outside agencies to help expedite evaluation. Go to task No. 41.
38.0	do	Remove the child's evaluation copy from the RPM and send it to the respective LEA psychologist.
39.0	LEA psychologist	Determine the chronological priority by referral date. If the child's priority number equals the number of psychologists' days available for evaluation before June 30, initiate the earliest evaluation date on pt. II of the evaluation copy and return this copy to the IU psychologist. If there is not an excessive backlog causing the evaluation to go beyond June 30, attach the evaluation copy to an evaluation form and proceed with the in-depth evaluation procedure, starting with task No. 41.
40.0	IU psychologist	If the LEA psychologist returns the evaluation copy indicating lack of evaluation capacity at the local level, consult with the IU executive director and either absorb the evaluation at the IU level (per 37.0) or negotiate with the LEA administrator regarding provision of evaluation services.
41.0	IU or LEA psychologist	Contact the family physician or other physicians to participate on the evaluation team.
42.0	IU or LEA psychologist	Contact at least 1 other individual (school health nurse, public health nurse, guidance counselor or social worker) for participation on the evaluation team.
43.0	do	Decide whether it is necessary to contact others (the spirit, technician, or other professionals) for the evaluation.
44.0	IU or LEA evaluation team	Secure the necessary information on the child as stipulated by the evaluation form. The psychologist will be responsible for coordinating with each member the information to be provided.
45.0	do	Based on review of the evaluation form data, decide if the child is mentally retarded and program placement is required.
46.0	do	Have an educator who knows program content participate in the program design and placement decision.
47.0	do	Formulate program design suited to the child's needs.
48.0	do	Discuss findings, comments, and recommendations and write recommendations to include the type of program necessary and the pupil skills required. Note: If the evaluation team is at the LEA level, they will specify in addition to the program type, the name of the school recommended for placement if such a school program is available in a school through the LEA. If such a program is not available in the LEA, the evaluation team will refer their findings to the IU for determination of school placement.
49.0	IU evaluation team	Determine program type and specific school name appropriate for placement and record on RPM.
50.0	IU or LEA psychologist	Contact parents and with the appropriate members of evaluation team present in writing to parents their recommendations and findings. Included in recommendations should be description of program and legal alternatives and rights.
51.0	Parent	Consent in writing to the recommendations of the evaluation team or request a due process hearing within 5 days if notice is given by conference and within 10 days if notice is given by mail.
52.0	IU or LEA evaluation team representative	Summarize the meeting with the parent and forward a copy of this summary to the parent for review and also the other evaluation team members. Complete III of the evaluation copy (RPM) and forward it to the IU.
53.0	IU executive director	Maintain consultation and monitoring throughout the process by the local task force consisting of the IU executive director, the respective school district administrator, (LEA administrator), the local (county MM MR) administrator and a consumer citizen representative.
54.0	IU or LEA psychologist	Forward to the local task force the evaluation form, copy F of the RPM, the description of program and the name of the school into which the child should be placed and a copy of the parent conference summary and any other pertinent information.
55.0	IU executive	Contact the school administrator, inform him that the child will be placed according to evaluation form I-13 and coordinate with school administrator using COMPET information to provide necessary program to meet the child's need.

See footnotes at end of table



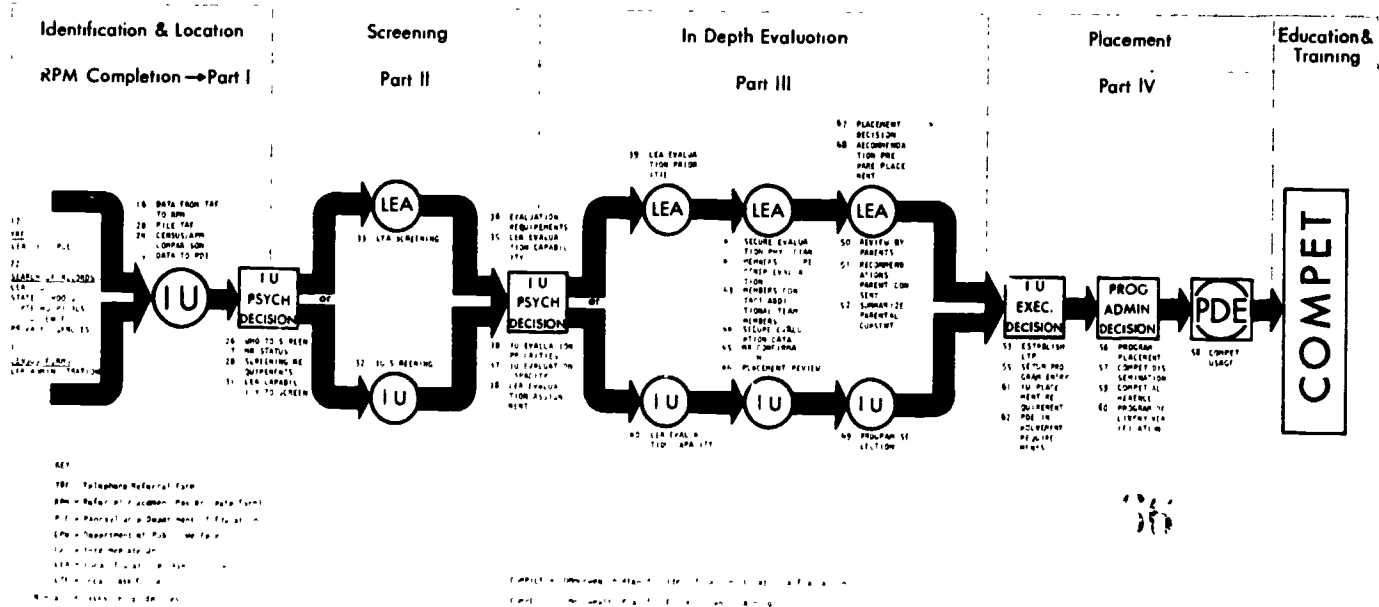
## III. GUIDELINES FOR IMPLEMENTATION OF THE COMPETE COMPET PROCESS - Continued

Task No	Responsibility	Process task description
56.1 57.0	Program administrators PDE	Follow necessary placement procedures to get the child into the program. Complete and distribute the COMPETE document to all school districts IU and MH MR administrators. This document should include a definition of purpose, contents of application and a set of guidelines for use. There should be 2 basic components to the document: 1. Procedures for interpreting a child's in-depth evaluation to determine the program standards to be complied with in order to provide the child with the most relevant education and training. 2. Standards of program operation to be used by the school administrator and teacher, including: pupil-teacher ratios based on the individual characteristics of each child; hours of instruction based on individual pupil characteristics; alternate curriculum designs based on each pupil's objectives; minimum facility requirements; and, specific teacher qualification necessary to work with various pupil characteristics. Also, procedures for recruiting, hiring and training personnel with the necessary qualifications will be specified.
58.1	Program administrators	Work with class teacher to utilize the COMPETE information to recommend changes in the program to accommodate the child's needs.
59.0	School administrator	Follow the guidelines set forth in the COMPETE document to determine areas of program change necessary to meet the needs of each child referred.
60.0	do	A copy of the child's evaluation form and RPM data will be received from the evaluation team. If program change accommodations for a child referred for placement are not possible, so stimulate on the RPM and contact the IU executive director to determine the appropriate action.
61.0	IU executive director	Determine if the local program must make program changes to accommodate the child. Record the results of this decision on the RPM. If the local program can't provide for the child, determine per 59.0 the IU program changes and specific school to be attended, and place the child. Show all transactions on pt. IV of the RPM. Return copy F of the RPM.
62.0	do	Contact the PDE if IU placement is not possible.
63.0	do	Complete pt. IV of the RPM and forward the appropriate copy (PDE) to the PDE and file the master copy with the IU or LEA responsible for the child's placement. File the program copy of the RPM with the school or MH MR program where the child is placed.
64.0	PDE	If no public or private school program is available, then a public program must be developed according to COMPETE guidelines.
65.0	DPW	Submit to the PDE an annual report indicating the educational strategies identified and the status (evaluation) of each child served.

\* Occurring 1 time only (not continuous)

- Based on capability and capacity, the evaluation tasks hereafter fall to the LEA or the IU per 400 or 37.0

Pennsylvania Department of Education  
Bureau of Special Education  
Compile / Compet - Process Diagram



## APPENDIX I

(Redraft - Revised Working Copy)

## STATE TASK FORCE RESPONSIBILITIES

These are the planned responsibilities of the State Task Force. Review them carefully and point out areas in question.

1. Insure that LTFs meet and submit reports.
  - A. See COMPFILE, Page 6, Paragraph G
2. Insure that proper agencies are represented on the LTFs as specified
  - A. See COMPFILE, Page 4, Section A, Paragraph 2.
  - B. See Appendix 5
3. Prepare and disseminate a standard report format to be completed by LTFs at regular meetings. (See Attached Draft)
  - A. Prepare standardized form to include various categories which must be reviewed regularly by the LTFs.
4. Review minutes/reports from LTFs
  - A. Act on Special Problems (indicated on standardized forms.) Indicate how this should be done on the form
  - B. Provide prompt written response to program evaluation, planning, communication, and self-evaluation
5. Provide answers to policy/procedure questions
6. Provide LTFs with guidelines for program evaluation and planning.
  - A. Deal with specific objectives to provide adequate programs.
  - B. Provide information from all departments involved in planning for future programs
7. Review plans and offer recommendations and feedback.
8. Issue guidelines/policies and communicate regularly with each LTF semi-annually.
9. Evaluate each LTF semi-annually
  - A. Identify nature of consistently occurring problems
  - B. Study program evaluation in comparison to DSE Evaluation.
  - C. Study Planning and its compliance with PDE and DPW codes and standards.
  - D. Review LTF's Self-Evaluation in comparison with STF's Evaluation.
10. Annually consider termination of LTFs and STF.
  - A. Are LTF's activities being completed or duplicated by other agencies?
  - B. Ditto by STF.
11. The STF shall be annually reviewed.

(Redraft Revised Working Copy)

## LOCAL TASK FORCE RESPONSIBILITIES

These are the proposed responsibilities of the LTF for the coming year. Please review and edit, making additions or deletions that you feel are necessary.

1. The LTF will meet on a regular basis.
  - A. A regular basis shall be defined as at least one meeting every six weeks.
  - B. Unscheduled meetings may be called when requested by any member of the task force through the chairman.
2. LTF is responsible for preparing a report at each regularly scheduled meeting.
  - A. The format of this report will be specified in guidelines prepared by the STF.
  - B. In the case of an unscheduled meeting, it will not be necessary to follow this format.
  - C. The LTF will submit this report to the REO within ten working days after the meeting.
    1. The REO will make copies of this report and distribute them to the STF members.

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3. The LTF is responsible as outlined in COMPHE for inviting members from the appropriate agencies.

A. See COMPHE, Page 4, Section A, Paragraph 2.

B. Vacancies should be filled promptly prior to next regularly scheduled meeting.

C. The STF will be notified of attendance by LTF members at regular scheduled meetings.

4. The LTF is responsible for following guidelines and complying with policies and procedures outlined by the STF.

5. It is the responsibility of the LTF to ensure that educational planning is a coordinated community effort.

6. The LTF should conduct program evaluations and should compare their findings with other evaluations.

A. The LTF should provide information for intermediate unit strategies for change.

B. LTF findings and recommendations should be submitted to STF for periodic review.

7. The LTF should review recommendations and communications from the STF as a regular agenda item.

8. Efforts and work completed by the LTF will undergo an annual evaluation by the STF or its representatives.

9. The LTF should annually evaluate the STF's work toward meeting the needs of the LTF.

(Redraft Revised Working Copy)

This is a proposed form the LTFs will submit to the Right to Education Office within 10 days of each meeting. Please review it and make additions, deletions and changes you feel necessary.

I. \_\_\_\_\_  
DATE OF MEETING: \_\_\_\_\_

I. Members in Attendance: \_\_\_\_\_, Members not in Attendance: \_\_\_\_\_

II. Agenda.

III. Special problems and solutions.

A. Pupils.

B. Teachers.

C. Other personnel.

D. Funding.

E. PDE.

F. Other.

IV. Program evaluations.

V. Planning.

VI. Communication with STF.

VII. Self-evaluation of LTF.

VIII. Reaction needed by STF.

IX. Other

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## APPENDIX J

Commonwealth of Pennsylvania  
Department of Education

SCHOOL ADMINISTRATORS' MEMORANDUM **535**

Subject: Dual Education According to the  
Right to Education Agreement

To: Chief School Administrators  
Intermediate Unit Executive Directors

From: John C. Pittenger  
Secretary of Education *John C. Pittenger*

August 9, 1972

In order to clarify the responsibility of the Department of Education and its instrumentalities under the Right to Education agreement, the Secretary of Education sent a letter to the Secretary of Public Welfare on July 7, 1972, which contained the following two paragraphs:

"The Agreement identified the responsibility for education and training of school age children to be that of the Department of Education. Therefore, education and training will be provided to all such retarded children in the community by the Department of Education and its instrumentalities, the school districts and the intermediate units.

For the present, education and training will be provided to all school age children in state schools and hospitals for the mentally retarded by the Department of Public Welfare and supervised by the Pennsylvania Department of Education through its instrumentality, the intermediate unit."

These paragraphs are interpreted to mean the following:

Beginning with the 1972 school year, school districts and intermediate units shall provide education to all mentally retarded children placed in community type programs including, but not limited to, (1) growth and development centers, (2) private licensed facility programs operated by the Department of Public Welfare and (3) interim care facilities. The Secretary of Education shall assume responsibility for supervising the execution of this part of the agreement.

For the school year 1972-73, intermediate units shall assume the responsibility for supervising all educational programs in the state schools and hospitals for the mentally retarded in accordance with Paragraph 39 of the amended Consent Agreement as distributed in School Administrators' Memorandum 522.

Chief School Administrators	Staff Assistants	School Board Secretaries	Secondary Principals	Elementary Principals	State Colleges & Universities	Nonpublic Schools	Department of Education Staff
578	578						578
CHIEFS OF SPECIAL PROGRAMS							Number of Sheets in this Release
Special Education	Vocational Education	Agriculture	Home Economics	School Milk & Lunch	Highway Safety	Instructional Materials	1

Mr. BRADY says, The gentleman from Minnesota, Mr. QUIN, must go to the Rules Committee, so we will call on him first.

Mr. QUIN. We have an ESEA bill up there and we are anxious to get that because Pennsylvania fares pretty well.

Let me ask you about the cost of education. Could you elaborate a little bit more on your interpretation of that?

Mr. CARROLL. I would read it the way we read our excess costs. If in school districts the cost of instruction is, say, \$1,000 and if as we look at the program for, say, mentally retarded children and we find the cost of that program would be \$2,000, then the State would contribute 100 percent above what it would cost to educate an exceptional child.

Mr. QUIN. How do you read the language after "exceeds \$800"?

Mr. CARROLL. I must admit, I am not sure. I do not understand the definition. It may mean if for example our average per pupil cost for handicapped children is \$2,000 and the average instructional cost is \$1,000, again I am reading into it our interpretation, I think your participation would be for the difference or \$1,000.

Mr. QUIN. Let me also ask you then, on your average per pupil expenditure for children in the State, do you look at that as being all the expenditure or just the expenditures, State and local expenditures for special situations?

Mr. CARROLL. The cost of instruction which includes debt service, capital and that sort of thing, by taking these factors into consideration you arrive at a figure called average instructional expenses.

Mr. QUIN. What about in the expenditures that you would be making for so-called education of disadvantaged, as we are now talking about in title I of ESA?

Mr. CARROLL. I did not read that to include any of the categorical Federal programs.

Mr. QUIN. I meant expenditures.

Mr. CARROLL. We would include that. As you may know, we do have a payment on account of poverty that we make.

Mr. QUIN. So in your interpretation, you would?

Mr. CARROLL. Yes, sir.

Mr. QUIN. Now, how about the comparison of costs in the various States? They vary greatly as to the expenditures per child for various handicapped groups.

Mr. CARROLL. I can speak to that, sir, in terms of our own State where we have, I think, as great a disparity in the State as you have among any of the other States.

We think the excess cost method I described to you is one way of handling that, namely to provide a class for retarded children, which is more important. So we think excess costs give us a way of allowing for that.

Now, we do not have a figure of \$800, as you have, in our formula. Some of us have been concerned with the rising costs because of the methods of computing excess costs. We think you have a way of governing that to sort of standardize the expenditure.

Mr. QUIN. Benefits for the educable mentally retarded, you have \$1,300, and New York has the figure of \$2,800, Minnesota has a figure of \$1,681. I think in my colleague's district in Idaho, the figure is \$1,109.

Now, you are running within the ball park of those other States but New York is considerably above. Does that mean New York would

be able to receive that additional amount of money which would not be available to you?

Mr. CARROLL: The way I understand it, yes.

May I make one comment on that? I believe part of this means there must be a standardization at calculations.

Mr. OHRMAN: In the calculation of our costs, we calculate differently for school districts and intermediate units as to costs. By law, instructional costs do not include capital outlay, rentals, et cetera. The intermediate unit has no tax base but is charged with operating schools or classes. They therefore must buy equipment and must have the overhead costs and so on.

The differential between the two seems disparate until you put in the overhead. Again, renting in the Philadelphia area as compared with renting in other areas is much different. I think when you begin to analyze data across States, this differential will appear. We do not know how New York is calculated. Some are on minimum foundations and other kinds of costs. So it is going to take a uniform formula to arrive at fair and equitable excess cost factors. Until you do that, you will have quite disparate data.

Another thing, in our calculations we base it on the average membership. One of the problems we have is in itinerate services. With the advent of support of services, these services become cost figures based on a per pupil cost of a very high amount.

Let me give you a specific example. You employ a teacher who has a number of years of experience. You employ her at \$15,000 but because she is a speech specialist it runs her schedule to \$18,000. You divide that by one and you have \$18,000 per child. So you have a district that might have one speech correctionist which submits a budget which, in my estimation, is not the best way of planning, but it shows for that particular school district that kind of cost figure, that is, \$18,000 per child. Then this gets distorted in the calculations of cost.

Mr. QUIE: Mr. Chairman, do you think our staff could pull some additional information together as to what is on these charts?

Mr. BRADEN: Yes. If the gentleman will yield.

I have observed one of the possible benefits of the kind of legislation we are talking about is to move in the direction of some common definitions and some common costing standards.

Would you have any comment on that question of common definition or common standards?

Mr. CARROLL: We commend you for that idea. We find it very difficult to even learn from other States. We cannot talk the same language. Again, it would be a nice side benefit.

Mr. QUIE: That is the dilemma I face in trying to figure this out, but we can work this out on somebody else's time.

Dr. OHRMAN: Mr. Chairman, we have been attempting to get out some very specific kinds of things. We do have our budgets planned in both categories very much in the same way. I believe Representative Quie was citing the Rand statistic data. We would be glad to share this with you. We have been a little hesitant about disseminating this information to the public because of misinterpretation. But we would be glad to share that experience with you.

Mr. BRADEN: Thank you very much. Let me ask you a couple of questions. You summarized for us very briefly the celebrated Penn-

sylvania case. Can you indicate what the impact has been in your State?

Mr. CARROLL: There have been two main impacts. We have always thought public policy in Pennsylvania should be that all children between certain ages are entitled to a free public education.

Between that policy and actual carrying it out, there was some slippage. The impact of that was to clearly establish they had the right to an appropriate education or training. It further said that the Commonwealth has more than just a passive responsibility in locating those children. We had to be aggressive in finding the children and making sure they were in such programs and provide them with the education.

We found it a very difficult concept to get across to school administrators because they had been led over the years to believe that children who were severely mentally retarded should be in institutions run by the State. But the past year or two, we have been totally involved in this. We think administrators around the State are far more alert to their responsibilities and we are beginning to develop programs appropriate in education and training.

Aside from that, we are very alert to the fact that other exceptional children may also be denied an appropriate education. Over the period of 2 months, we will be looking at the situation to determine whether we can extend the PARC concept to all exceptional children in Pennsylvania, through State board legislation. We do not feel public policy should be able to determine this through our existing channels.

We also found, as a result of the deplorable conditions in our State schools and hospitals, the directors of welfare in education have signed an agreement which places the responsibility for State schools and hospitals with us.

We have started a program in all our State schools and hospitals and over a period of 2 years we hope to bring them up to the same level of education that the children not institutionalized would receive. That does not mean that we are not still trying to take the children out of the program and get them into community based facilities.

Mr. BRADEN: I have a couple other questions, Mr. Carroll. I understand in Pennsylvania you have used some of your revenue sharing moneys for financing education for the handicapped. If that is the case, I speak for myself. I want to commend you and Governor Shapp for moving in that direction because from what evidence I have found, very few States have used their revenue sharing funds for providing human services or support.

Can you make any comment on what you have done with revenue sharing and what you may know of this from other States?

Mr. CARROLL: To date, we have used \$96 million of revenue sharing money to support education for the handicapped. This year, we will spend \$45 million of that. That money will go to two kinds of programs. One, it will be to help expand intermediate programs for exceptional children, including helping us to carry out the PARC case. About \$25 million will be used for that. An additional \$20 million will be divided between Pittsburgh and Pennsylvania, because they have so many problems and great difficulty in meeting their obligations. So \$20 million of that will serve in those two districts.

I do not think we would have been able without the revenue sharing money to be as far along in our right to education program as



we are. We are getting much less of the total State dollar this year than we did before and the competition for money is quite keen. It has made it possible to do that.

Mr. BRADY. I would just say finally, by way of observation, I am sure you are aware of the theory, on the basis of which some of us have introduced this bill to support the education of handicapped children, is two-fold, namely that more and more States are moving as Pennsylvania has done, to make sure handicapped children have a right to an education; and, second, States, if they carry out their constitutional obligations, may not have the financial wherewithal to do so. The legislation would move to help you meet the additional costs of meeting the problem. It does take more money to educate the handicapped children than it does to educate nonhandicapped children.

Mr. Eshleman?

Mr. ESHLEMAN. I may want to take a little more time with these witnesses because they are from my State.

There are two bills pending before the legislature. One would pay \$600 and the other two-thirds of the cost for a handicapped child. Which would Pennsylvania prefer?

Dr. OMERMAN. Depending on how you calculate those costs, it would appear the excess cost would be of the greatest benefit to us. The flat sum has a tendency to do another thing and that is to count children whether handicapped or not and in some way, to get them in on a flat sum basis. But when you must get them in and show what your costs are, this is an honest and forthright method to assure all the costs of running in the right direction.

Mr. ESHLEMAN. So you would prefer the two-thirds of excess costs, if we were fair in what we included as excess costs?

Dr. OMERMAN. Yes. This would also allow for those cases where there is a disparity because of the economic area.

Mr. CARROLL. Are you referring to H.R. 70 and S. 6?

Mr. ESHLEMAN. Yes.

I do not mean this question to be embarrassing, but as I interpret your costs for the so-called normal student in Pennsylvania, it is \$1,200. I am rounding it out. I am rounding out the figures. For the handicapped child, it is \$1,350. That is in excess of \$150 or about 11 percent more.

According to the way I read the figures, you are just saying the cost is 11 percent more to educate a handicapped child. That strikes me as being extremely low.

Mr. CARROLL. Are you using the Rand data, sir?

Mr. ESHLEMAN. I am using your charts. I rounded out the figures, but it is roughly 11 percent more which you are saying it costs you to educate a handicapped child in Pennsylvania.

Mr. CARROLL. You are talking about average costs of instruction?

Mr. ESHLEMAN. Yes. I should not have rounded it out.

Mr. CARROLL. I am not sure where this sheet came from but I would raise questions about the figure. I think it is lower.

Mr. ESHLEMAN. In other words, you do not want this submitted as part of the testimony?

Mr. CARROLL. I would like to look at the figure. I think it is closer to \$1,000.

Mr. ESHELMAN. All right. Let me inject one more thing. I realize in a sense it is unfair to compare us to New York State. But I will go by percentage, not dollar figures. We are 11 percent more. New York spends 50 percent more. Now, how come the disparity?

Dr. OHRMAN. Let me go back to my comment on the calculation of the costs for the handicapped in school districts. It is very clearly spelled out in the school code that we may charge off a percentage of the principal's time for handicapped children. That comes out as a reduced figure. There are about 300 of those school districts operating a program. So calculated in our costs for educating the handicapped, the cost that might not be calculated does not include the overhead costs when we begin to calculate the money for this expenditure.

Mr. ESHELMAN. You are saying, if they are in the same building, the building would be put onto the normal education costs?

Dr. OHRMAN. Yes. That is not calculated when we get our data figures and spread those before the public. They do not carry the rental, the overhead costs.

Mr. ESHELMAN. Some 300 school districts out of 506 carry education for the handicapped. If we pass the legislation, would it be 506 out of 506?

Dr. OHRMAN. No. The intermediate unit serves the children.

Mr. ESHELMAN. Do you have some situations where there is a combination of the intermediate?

Dr. OHRMAN. Yes. You may have many districts who will take the initiative if they have what they think is an appropriate funding level, to begin to take care of children in their own districts. With revenue sharing, they do not have to wait for disbursements. They have the money on the barrelhead. The intermediate unit has the money, so that is not a question.

Mr. ESHELMAN. I would like to get on the record your definition or reasons as to what constitutes excess costs for handicapped children. What in Pennsylvania constitutes excess cost? I would like to get that in the record for these hearings.

Mr. CARROLL. Let me first take it for intermediate units because we have two systems. Where a school district has a child attending in an intermediate unit, the cost of instruction for that child is computed. The intermediate unit operates the program, provides anything at all connected with that program. That is costed out and the difference between that district's actual costs for instruction for regular children and the total cost of the program in the intermediate units—

Mr. ESHELMAN. Excuse me. Will you inject what things make the difference?

Mr. CARROLL. Rental of a facility, equipment, employment of aides, sometimes medical supporting services. They usually have more severe cases to deal with, therefore more services are required.

Mr. ESHELMAN. Is the salary for teachers higher than that of instructors of regular children?

Dr. OHRMAN. Yes. In this instance, we have highly qualified teachers and they are well paid. Many of our teachers have master's degrees.

Mr. ESHLIMAN. Could you give an estimate of that difference in round figures?

Dr. OHRIMAN. Number one, by law again, all teachers in special education receive a \$200 recruiting stipend. There are several instances that go beyond that. I do not have an estimate of the differences in the salary. What distorts it is collective bargaining. So teachers are placed on steps with regard to the degrees they have, et cetera.

Mr. CARROLL. The teachers in a stronger bargaining unit will have a higher salary because of the way the bargaining process works.

Dr. OHRIMAN. I do have forms here which cover in detail the kind of costs allowable, basic costs. We will be glad to submit these forms to you.

Mr. ESHLIMAN. I believe I have no further questions.

Mr. BRADYMAN. Mrs. Chisholm?

Mrs. CHISHOLM. Thank you very much. I arrived a little late, and perhaps you have addressed yours. If to some of these questions already.

In terms of the numbers of mentally retarded youngsters you have in the State of Pennsylvania, what is the proportion of youngsters attending schools and those not getting any kind of education whatever?

Mr. CARROLL. If we had done our job correctly under the court order, there would be some. But we are working to increase the quality of their programs.

Dr. OHRIMAN. In the written testimony it is pointed out that there is a zero reject of children who are mentally retarded. All of them have been placed in a program which has been considered to be an appropriate program. The counsel for the plaintiffs, the local Association of Retarded Children, have participated in hearings before the masters and they have said, "If anyone will educate any other child for us, we will place those children in the program." So we do have that kind of situation existing in Pennsylvania. If a city of that size can carry out a program of that magnitude, then it seems to me there is no excuse for anybody in these United States of ours to say it cannot be done.

Mrs. CHISHOLM. Thank you. There is a controversy raging now in the educational field with respect to whether children mentally retarded, deficient or handicapped, should be placed in the same facilities as our unaffected children. What are your thoughts on this?

Dr. OHRIMAN. It seems to me there are unique situations where, because of geographical size, population, et cetera, that you would need to have a facility which is and of itself was a separate kind of facility. These are those who have decided they should move ahead. We have a situation in Allegheny County where 225,000 people have built 7 large isolated individual schools. They did this partly because of the complexity of getting into existing facilities. They have placed children there in those areas and from the best we can determine, these children do receive a decent education, human and warm interaction. When those children can return to regular schools, they do so.

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Since 1959, Pennsylvania's State board results said that it preferred placement of handicapped children in regular grades; the next preferred placement was in regular classes in regular schools; and the last preferred was in any other situation.

So we have a problem in mainstreaming children.

I just listened to a man who said 20 years ago he could not go down the Colorado River. At that time, there were only experts going down. Today, most of us could go down the Colorado River. However, we would have all the support systems to guarantee that we would be in no more danger than those people crossing a very calm stream.

The idea that a child is in the regular grades, in and of itself, will not be beneficial to the handicapped children.

Mr. CYRILL. In Pennsylvania, we talk about mainstreaming and we think that is a good concept. We come across specific problems and rather than let the children be kicked around, we provide another program. So we are all over the water front.

Mrs. CRISNOLL. Thank you.

Mr. BRADY. Mr. Hansen?

Mr. HANSEN. Let me at the outset join in welcoming you and expressing appreciation for the leadership Pennsylvania has furnished in this particular endeavor. I congratulate you and acknowledge our collective indebtedness to the State of Pennsylvania, partly as a result of the court action. To that extent, though it was involuntary, it does not diminish my admiration for the State of Pennsylvania.

As I understand, the State went beyond the limitations of the consent decree and initiated programs that were not designed to cover students under that decree. Is that correct?

Mr. OHRMAN. Yes, sir. The only group of children who may be in doubt, unless it is informally done, would be the emotionally disturbed. This is of great concern to us. The other thing that has happened, there were large numbers of school age children in correctional institutions receiving funds from other agencies. There have been agreements worked out whereby those children will get a better education. We have in State hospitals an education program. The transfer of the educational responsibility from the department of welfare to the department of education was not a part of the consent decree. This was on behavior and attitudes and actions that were related to other procedures.

Mr. CYRILL. I hope this time next year we can say the same privileges the handicapped children have will be extended to all other types of handicapped children. It has really stirred us up to go beyond what is contained in the court order.

Mr. HANSEN. Let me ask with respect to the programs in the institutions and those in public schools, what have you learned as far as the difference in costs? Do you have any clear experience to show the costs between the institutions and the schools?

Mr. CYRILL. I am not quite as optimistic as to what has been accomplished in the first year. We have a series of advocates who go around and report to me on what is happening. I am getting mixed reactions from the State hospital. We have one child receiving 1 hour of instruction per day. It is impossible for us to calculate the costs. If you are a king me is it more costly to educate a kid in a State hos-

pital as compared with a public school. I do not think you are going to find dramatic differences unless they are in supportive instances.

We are making a concerned effort, for example, to get those kids, even while they are in the institutions, out of the institutions and into vocational schools or regular schools. We do not think that will appreciably raise the costs either because the facilities are there to be used.

Dr. ORLIMAN. Another aspect of this, we have children who work, whereas 2 or 3 years ago they would have been in institutions and in many cases would have on what is known as the PARC wards of institutions, we have these children attending public schools. Some of these classes are in regular public schools. The attitude that has been seen by persons working with them is just too dramatic. It cannot be described. You have to see it. We know from those working with the mentally retarded that the books and all the things written about the education of the retarded are going to have to be rewritten.

We have a youth who came into the school on a stretcher at 17 years of age. We do not know whether that was the way the parents managed the child by keeping him immobile, but people are startled to see, in just 6 weeks, him walking down the hall.

We have a child 8 years old, never been out of a prone position. Now we have him sitting at a table eating.

We have a child sitting in a wheelchair and the mother almost fainted when they took the child out of the chair and began moving her.

A teacher called in October and said, "I had a gray day. They said these kids would not be toilet trained until next summer. What is on the curriculum next?"

We have a lot of elementary teachers not finding jobs. One young man came in and accepted a position and he now has set a life goal to work with the very severely handicapped. He has discovered the coat rack as being a very handy thing to use when you have to diaper teenage boys. The child reaches up and grasps the bar of the rack while this is being done.

We really do not have enough of the growth and development specialists in the educational system. We need to do that as we watch children unfold.

Mr. CYGERT. One of the things we have not brought up yet but which I think we should is the main problem we see now is not public attitude, at least in Pennsylvania. It is the availability of people who are trained in serving these children right now. I think in the case of the mentally retarded, the best qualifications I know are you have to be very young, physically active, and like kids. Maybe there is more to it than that and maybe we can provide that in our colleges and universities.

Mr. HANSEN. I am delighted to hear you say that. Those who will be required will have to have specialized skills. These programs are going to involve a wide range of highly specialized techniques and special types of people who have feeling for the handicapped. The willingness and desire to work with them is not an average trait, as you well know.

The other point I would like to underline, we need to know a great deal more than we now know, not only in techniques but in some of

the very hard cost figures as a basis for allocating what will always be limited resources.

You have touched on another element in our discussion of cost versus benefits and that is the possibility of some very real economic benefits, apart from the human values. As a result of the success in these programs, we do see the cost of institutionalization and care can be a real deterrent to the program. That should be cranked into the whole equation.

I should once again like to say we look to Pennsylvania to supply some of the data that will lead to a successful program.

Mr. BRYAN says, I think you can tell from the response of the members how valuable we regard your testimony and how we regard the contribution the State of Pennsylvania has given to this program. We hope you will give our regards to the secretary of state education, John Pittenger.

We shall next hear from a panel of attorneys, Thomas L. Shaffer, dean, University of Notre Dame Law School, South Bend, Ind.; Donald Hollingsworth, attorney, Memphis and Shelby County Legal Services Association, Memphis, Tenn.; and Pat Wald, attorney, Mental Health Law Project, Washington, D.C.

We are grateful to have you here and again we hope it will be possible for you to summarize your particular statements.

It is a great pleasure to welcome a friend and constituent, Dean Shaffer of the Nation's No. 1 football team.

#### **STATEMENT OF THOMAS L. SHAFFER, DEAN, UNIVERSITY OF NOTRE DAME LAW SCHOOL, SOUTH BEND, IND.**

Mr. SHAFFER. Thank you.

We have an extensive program at Notre Dame Law School for the training of lawyers. Our university is a sponsor of the National Center for Law and the Handicapped, which is federally funded. I am a member of the board of directors and chairman of its advisory committee and one of the four educators on a treatise on mental rights for the mentally retarded.

What I would like to do is summarize very briefly the developing right to equal education opportunities which is the legal climate appealing for funds to which H.R. 70 stems.

I would like to make a couple of comments about why I feel categorical assistance is the most appropriate aid for this project. Then I would like to make a couple of relatively more technical comments on the bill.

The recognition of equal educational opportunities begins with the Brown decision, now nearly 20 years old, handed down by the Supreme Court of the United States. There for the first time it was recognized, any time a State government undertakes to educate anybody, they must extend educational opportunities on an equal basis to all its citizens.

That decision was not applied to handicapped children until the Clark case, which you have been discussing this morning. It extended equal educational opportunity to handicapped children but the second point, which is equally important, is that it insisted upon fair classification procedures conducted by State government. That decision was

adopted and extended beyond handicapped children and all Landi-capped children the following year in the District of Columbia in the Mills case.

There are two other points the Mills case made that needs to be pointed out here. One is the recognition of the gentleman who just testified, that every child is educatable. The philosophy of that is called zero reject. The other is facing the principal defense raised by the Board of Education in the District of Columbia.

The court in that case said if there is not enough money to provide adequate educational services for the children, every child must bear the disadvantage of inadequate funds.

That judicial philosophy has been extended in a line of New York cases involving both retarded children and other cases. The interesting outcropping has been a number of states adopting statutes providing rights that otherwise would be provided by court decree. There are recent statutes in Indiana, Kentucky, Maine, Virginia, Nebraska, Nevada, Michigan, and North Dakota.

The problem of course is that these cases and statutes in establishing equal opportunity do not provide the money needed for it. H.R. 70 speak to funding and implementation of Federal rights.

I would suggest to the committee the form in which that should be done is the form in which this bill does it.

The question is whether it should be in the form of categorical assistance, which I think would be appropriate for four reasons. First of all, we are talking about Federal constitutional rights imposed by orders of Federal judges on State governments which do not have enough money to educate the handicapped. Assuming these State officials have obeyed the law and absence of funding will produce a general weakening of the schools, because the clear purport of the Mills decision is whatever funds there are must be applied equally to the handicapped children, those funds would have to be taken from the nonhandicapped if the funds are not provided.

The parents of these children are not a powerful block. The likelihood is that they will not prove effective in representing the interests of the children.

Finally, from this, the subsidiary point in all these cases is that the children are entitled to fair procedures in classifying them as retarded and assigning them to take specific kinds of education. Unless there is the close supervision which this bill provides, there is a real danger money provided by the Federal Government will be used to defeat these rights, not implement them.

I would like to comment on a couple of closer matters. First, the bill extends assistance to institutionalized children. The figures I read are that approximately 80 percent of the children confined to institutions are not educated at all. They are simply stored. The second point I think is important is the procedural aspects of the bill. I suggest this could be tighter than it is. Too many will be classified as retarded, rather than too few. The decisions of the court and the bill require the classification. However, the bill is not as particular as some of the court orders are.

With your permission, I am going to submit for the record some excerpts from the Board of Education and two or three recent State decisions on this point. I will submit these for the record, if I may.

That concludes my summary.

[The prepared statement of Mr. Shaffer follows:]

STATEMENT OF THOMAS L. SHAFER, DEAN, UNIVERSITY OF NOTRE DAME  
LAW SCHOOL

Mr. Chairman and members of the subcommittee, it is a great pleasure to appear before the Select Subcommittee on Education to testify on H.R. 70, the Education for Handicapped Children Act.

I am not an expert in the education of handicapped children. Nor do I appear as an authority on the details of H.R. 70 or the other pending legislative proposals concerning the federal role in education for handicapped children. However through Notre Dame Law School's sponsorship of the National Center for Law and the Handicapped, and through my involvement with the Legal Rights Work group of the Presidents Committee on Mental Retardation, I have become aware of the legal developments affecting right to education for handicapped children. The action of both state and federal courts and of our state legislatures over the last three years has been phenomenal. The judicial and legislative development of right to education for handicapped children is, I believe, of utmost significance to the deliberations of this subcommittee.

Two leading authorities on special education have called the right to education court decisions and their reverberations, the second most important social action experiment on behalf of exceptional children in the history of our nation, ranking only behind the enactment of compulsory school attendance laws. At the same time these experts warn that "right to education" may become a semantic titanic, doomed before it sails. The realization of a right to education for all handicapped children requires concerted responses by all branches of government at the federal, state and local level. The Congressional response which we are discussing today may in fact determine the fate and future of right to education.

Mr. Chairman, you will hear today from some highly skilled and dedicated attorneys who have represented handicapped children excluded from education. These attorneys have intimate knowledge of the problem involved in litigating and implementing right to education for handicapped children. Therefore I will limit myself to providing a general overview of the cases, with the hope that it will give you some indication of the strength and viability of the legal movement to guarantee educational opportunity to all children.

The concept of a right to equal educational opportunity for all children has been the keystone of educational policy in this country for well over a century and has been clearly recognized as public policy. For example, all but a few of the 50 state constitutions guarantee education to all children. The most significant pronouncement on equal educational opportunity was made by the United States Supreme Court in *Brown v. Board of Education*. You will recall that the Court stated:

"... it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms."

In passing we should note that the aftermath of the *Brown* decision amply demonstrates that a judicial declaration of a right is far from the fulfillment of that right. Although it is clear that educational inequality is prohibited under law for two decades, in the case of racial minorities, the law has been successfully evaded and frustrated and even today problems of implementation multiply.

While in the sixties, there were a few state court decisions applying *Brown* to handicapped children, it was not until 1971 that a federal court recognized the concept of equal access to educational opportunity for handicapped children.

In *Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania*, the principle of equal educational opportunity was applied to all mentally retarded children in the Commonwealth of Pennsylvania. The defendant public school officials were ordered to provide to every mentally retarded child "access to a free public program of education and training," and to provide notice, opportunity for a hearing, and periodic reevaluation regarding any change in educational status.

In the course of approving a Consent Agreement, the three-judge panel noted: "Without exception expert opinion indicates that

"All mentally retarded persons are capable of benefitting from a program of education and training; that the greater number of retarded persons, given such education and training are capable of achieving self-sufficiency and the remaining few, with such education and training are capable of achieving some degree of self-care."



In 1972, the principles of the *PARRC* case were applied to children with all types of handicaps in *Mills v. Board of Education of District of Columbia*. The District Court for the District of Columbia ruled that the exclusion of handicapped children from the public school system was violative of due process and equal protection. The Court ordered:

"That no child eligible for a publicly supported education in the District of Columbia public schools shall be excluded from a regular school assignment by a rule, policy, or practice of the Board of Education of the District of Columbia or its agents unless such child is provided *(a)* adequate alternative educational services suited to the child's needs, which may include special education or tuition grants, and *(b)* a constitutionally adequate prior hearing and periodic review of the child's status, progress and the adequacy of any educational alternative."

The Court explicitly examined the "doctrine of equal educational opportunity, the equal protection clause in its application to public school education," and ruled that this doctrine would be violated by the exclusion of any handicapped child. The Court went on to declare:

"The District of Columbia shall provide to each child of school age a free and suitable publicly supported education *regardless of the degree of the child's mental, physical or emotional disability or impairment*."

Especially significant to this subcommittee's deliberations is the manner in which the *Mills* court dealt with the defendants' argument that there were insufficient funds to educate all handicapped children. The court stated:

"If sufficient funds are not available to finance all of the services and programs that are needed and desirable in the system, then the available funds must be expended equitably in such a manner that no child is entirely excluded from a publicly supported education \* \* \*"

"The inadequacies of the District of Columbia Public School System whether occasioned by insufficient funding or administrative inefficiency, certainly can not be permitted to bear more heavily on the 'exceptional' or handicapped child than on the normal child."

The "right to equal educational opportunity" concept has been applied extensively in New York State Courts. *In re Leitner*, dealt with a "severely handicapped", "autistic infant 12 years old, suffering from a type of schizophrenia with likelihood of organic substrata". As the New York State Department of Education had failed to make available an appropriate educational program for the child, the State of New York and the county in which the child resided were ordered to pay the cost of tuition to educate the child at a facility in Rhode Island, up to \$12,500 a year.

The *Leitner* case is one of a line of New York cases in which the constitutional problems of equal protection are avoided by the courts construing state statutes in such a manner as to guarantee the right of handicapped children to an appropriate public education. *In re H.*, the City of New York was ordered to pay \$2,500 in tuition fees extended by the mother of a physically handicapped child for private education when the public schools refused to serve the child.

The constitutional question of equal educational opportunity were likewise avoided in *In re L.* by the Court ordering the City of New York, pursuant to New York statutes, to pay the full cost of the education of a physically handicapped child. Similarly, the Court in *In re Barland* ordered the State of New York and the county of residence to pay \$6,120 toward the education of a physically handicapped child.

Most recently, on November 26, 1973, *In Reid v. Board of Education of the City of New York*, the Commissioner of Education ordered that all students diagnosed as handicapped be placed immediately in appropriate public school classes or in public school classes are not available in private schools under contract in accordance with New York Education law.

Mr. Chairman, these New York cases demonstrate that the financial implications of right to education are very real and very extensive.

*PARRC*, *Mills* and the New York cases have a great number of similar actions across the nation. The courts have unanimously recognized the right of handicapped persons to equality in educational opportunity.

In *Harrison v. State of Michigan*, the United States District Court for the Eastern District of Michigan stated its clear acceptance of equal educational rights for handicapped persons:

"The plaintiffs accurately contend that providing education for some children, while not providing education for others (in this instance, handicapped children) is a denial of equal protection."

In *Kucell v. Ventolin*, a Connecticut court awarded the plaintiff, the mother of a perceptually handicapped child with learning disabilities, \$13,100 to pay for the out-of-state private education received by the child during two years in which the defendant Board of Education failed to provide an appropriate special education program for him. Moreover, the Court issued a mandamus ordering the Board of Education to provide the necessary program of special education for the child in the future.

One of the most recent of the cases delineating the constitutional right to equal educational opportunity for all handicapped persons is *Lebanek v. Spears*. The United States District Court for the Eastern District of Louisiana approved a Consent Agreement which guarantees the right of all mentally retarded children in Orleans Parish to an appropriate program of free public education. It is declared that every child who is mentally retarded or suspected of being mentally retarded is entitled to: (a) evaluation and development of a special education plan and periodic review and (b) provision of a free public program of education and training appropriate to his age and mental status, all of which is to be performed in accordance with specified very comprehensive procedural safeguards. Compensatory education was ordered for those parents, now adults, who had been without education as children.

Litigation to enforce the constitutional right of handicapped persons to equal educational opportunities is now pending in at least *three* additional states, and the courts have shown no signs of diminishing their concern over the constitutional rights involved. Recently, Defendants' Motion to Dismiss have been denied by three judge federal panels in Colorado, *Colorado Association for Retarded Children v. Colorado*, and in Maryland, *Maryland Association for Retarded Children v. Maryland* and in Wisconsin, *Pantek v. Wisconsin*.

In Wisconsin as in several states, the filing of a constitutional challenge has prompted the legislature to enact legislation assuring that every handicapped child will be provided an educational program. The Wisconsin Law provides for the provision of an education for all children whatever the nature and degree of their handicap.

Similarly, in North Dakota a federal court suit, *North Dakota Association for Retarded Children v. North Dakota*, prompted the legislature to enact a bill which provides a mandate for the provision of special education to all types of handicapped children.

In numerous states the threat of a lawsuit or notice of suits in other jurisdictions has resulted in the enactment of mandatory special education statutes providing educational services for all handicapped children. Among the states whose legislatures have assured that every handicapped child will have a free program of public education are Indiana, Connecticut, Massachusetts, Maine, Tennessee, Virginia, Nebraska, Nevada, Michigan, and Wisconsin.

This trend has been recognized and is being advanced in state legislatures throughout the country. A recent policy statement of the Intergovernmental Relations Committee of the National Legislative Conference indicates:

"\* \* \* it should be the responsibility of each state to provide, as integral part of free public education, special education services sufficient to identify and meet the needs of all handicapped children.

"The financing of education for handicapped children should be an integral component of public education support. Such support must of necessity reflect the additional cost of the provision of atypical programming."

The trend is apparent. Both judicial tribunals and state legislatures have moved to recognize the constitutional right to an equal educational opportunity for all handicapped individuals.

The question now, and the question in months and years to come is one of implementation. Given the best of circumstances—the cooperation of all parties, the active and appropriate involvement of all branch of federal, state and local government—we will still have difficult problems of implementation. The issues of manpower, teacher training, and the development of appropriate educational programs for severely and multi-handicapped children seem staggering to me as a layman. Yet our special educators and school administrators cannot even begin to deal with these and other important issues if we face threshold implementation problems of adequate funding—problems which lead to confrontation between the courts and school officials and perhaps between our courts and state legislatures. These are not hypothetical concerns. You will hear about them more specially from Mr. Hollingsworth, who, I understand, is now in Chancery Court in Tennessee on the issue of implementing the Tennessee Man-

datory Special Education Act and is facing the problem of securing appropriations for the timely implementation of that act.

Before closing, I would like to comment on two aspects of H R 70.

Firstly, I would commend the bill's attention and special emphasis on the education of institutionalized children. The leading cases recognize that the right to education applies to those children in institutions as well as to children in the community. Institutionalized children have traditionally been outside the ken of state and local school officials and represent the most neglected group in our society in terms of educational opportunity. A comprehensive survey of the residents of Massachusetts State Schools for the Mentally Retarded, published by the Massachusetts Bureau of Developmental Disabilities in 1971 revealed that 82% of the over 7,000 residents were not known to be in any educational program. From the hue of litigation concerning conditions in institutions and right to habilitation we know that Massachusetts is not atypical. Clearly special attention to educational programs for institutionalized children is long overdue.

The second point I would make about H R 70 goes to the adequacy of procedural safeguards relating to identification of handicapped children. There is a danger that we may end up with too much special education and too many children labelled handicapped. This danger may be made more acute by the existence of federal financial incentives to identify handicapped children. Examples of extensive mislabeling, biased evaluation, and misplacement have been raised in a series of California cases challenging special education classification procedures, especially I. Q. tests, which discriminate against Blacks, Mexican Americans, and other minorities.

Sections 7(c)(5) and 7(c)(7) on state plan requirements are intended to guard against mislabeling and discriminatory evaluation procedures. However, stricter provisions may be necessary. The detailed due process hearing procedures developed in *PARRC v. Mills* and *Lebanks*, represent perhaps the most important aspect of right to education and their extension and application throughout the country should be supported in the type of federal legislation we are discussing today. The subcommittee should consider alternate formulations of the general requirements of notice, hearing, and appeal now provided for in H R 70. State plans should be required to provide a full range of due process safeguards in any case involving identification, classification, program placement, transfer, or denial of placement to a child. The *Mills* order provides for a procedure which should be incorporated in a State Plan. The Massachusetts and Tennessee statutes also provide an approach and language which could be used to strengthen this aspect of H R 70.

I will submit for the record pertinent excerpts from *Mills* and the statutes mentioned. (See Appendix B).

Mr. Chairman, in the legal setting I have described, one in which it is clear that the right to equal educational opportunity is being firmly established as a legal principle, there is no doubt that the financial assistance as contemplated by H R 70 will be helpful. Indeed it may be the timely enactment of federal legislation such as H R 70 and its speedy implementation is the only way to make the legal principle a reality.

#### APPENDIX A

The following tables of cases on equal access to educational opportunity for handicapped children were prepared by the National Center for Law and the Handicapped and are current as of February, 1974. Citation to cases referred to in text of statement are included below.

#### TABLE OF CASES DECIDED

##### California

*Case A, California*, Civil No. 101679 (Super. Ct. Riverside County, California, filed January 7, 1972) Appeal Pending

##### Connecticut

*Kelly v. Avenetun*, No. 143912 (Superior Ct. Fairfield Civ. Conn., July 18, 1973)

##### District of Columbia

*Mills v. Board of Education of District of Columbia*, 348 F. Supp. 866 (D.D.C. 1972).

## Louisiana

*Lebanks v. Spears*, C.A. No. 71-2897 section E (E.D. La., April 24, 1973)

## Michigan

*Harrison v. State of Michigan*, 350 F. Supp. 836 (E.D. Mich. 1972).

## New York

*Dwyer-Borland*, 340 N.Y.S. 2d 745, 72 Misc. 2d 766 (Fam. Ct. Monroe Cty., 1973).  
*Dwyer II*, 377 N.Y.S. 2d 969, 40 A.D. 860, 72 Mich. 2d 59 (Fam. Ct. Queens Cty., 1972).  
*Dwyer-Held*, Doc. No. 11-2-72 & 11-10-71 (Family Court, Westchester County, New York, Nov. 29, 1971).

*Dwyer-L*, 342 N.Y.S. 2d 231, 73 Misc. 2d 733 (Fam. Ct. N.Y. Cty., 1973).  
*Dwyer-Leitner*, 328 N.Y.S. 2d 237, 38 A.D. 2d 554 (S. Ct. N.Y., App. Div., 1971).  
*Reid v. Board of Education of City of New York*, 453 F. 2d 238 (2d Cir. 1971).

## Pennsylvania

*Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania*, 334 F. Supp. 1257 (E.D. Pa. 1971); 343 F. Supp. 279 (E.D. Pa. 1972).

## Tennessee

*Ramon v. Watkins*, Civil No. 77620-2 (Chancery Ct., Shelby County Tenn. Writ of Mandamus issued Apr. 6, 1973)

## Utah

*Wolf v. Legislature of the State of Utah*, Civil No. 182646 (3rd Dist. Ct. Utah, Jan. 8, 1969)

## Virginia

*Tidewater Society for Autistic Children v. Virginia*, Civil No. 426-72-N (E.D. Va., Dec. 26, 1972)

## II. TABLE OF CASES FILED

## Alabama

*Hashberry v. Hale*, C.A. No. 73-M-739 (N.D. Ala., filed Aug. 7, 1973).

## California

*Barnstein v. Kipp*, No. R-19266 (Super. Ct., Cty. of Contra Costa, California, filed Dec. 31, 1970)

*California Association for the Retarded v. State Board of Education*, No. 237227 (Super. Ct., Cty. of Sacramento, California, filed July 27, 1973).

## Colorado

*Colorado Association for Retarded Children v. Colorado*, Civil No. C-4620 (D. Colo., filed Dec. 22, 1972).

## Florida

*Florida Association for Retarded Children v. State Board of Education*, Civil No. 73-250 Civ. PF (S.D. Fla., filed Feb. 5, 1973) (Abstention Order Sept. 26, 1973).  
*Wilder v. Carter*, Civil No. 73041-CIV-J-T (M.D. Fla., filed Jan. 7, 1973) (Abstention order—July 10, 1973)

## Hawaii

*Kekuhuna v. Burns*, Civil No. 72-3799 (D. Hawaii, filed April 10, 1973)

## Kentucky

*Kentucky Association for Retarded Children v. Kentucky State Board of Education*, C.A. No. 435 (E.D. Ky., filed Sept. 1973).

## Louisiana

*Marcombe v. Department of Education of the State of Louisiana*, Fed. No. 73-102 (M.D. La., filed Oct. 31, 1973).

## Maryland

*Maryland Association for Retarded Children v. Maryland*, Civil No. 72-7333-M (D. Md. filed July 19, 1972).

*Maryland Association for Retarded Children v. State of Maryland*, Docket 100, File 11676, Folio 182 (Circuit Ct. Baltimore City in Equity, filed Sept. 27, 1973).

## Massachusetts

*Association for Mentally Ill Children v. Greenblatt*, C.A. No. 71-3074-J (D. Mass., filed 1972).

*Stewart v. Phillips*, Civil No. 71-3074 (D. Mass., filed Sept. 14, 1970).

## Minnesota

*Donnelly v. Minnesota*, Civil No. 3-72-141 (D. Minn., filed May 2, 1973).

## Missouri

*Radley v. State of Missouri*, C.A. No. 73-C-556(3) (E.D. Mo., filed Sept., 1973).

## Nevada

*Brandt v. Nevada*, Civil No. R-2779 (D. Nev., filed Dec. 22, 1973).

## North Carolina

*North Carolina Association for Retarded Children v. North Carolina*, Civil No. 3050 (E.D.N.C., filed May 18, 1973).

## North Dakota

*North Dakota Association for Retarded Children v. North Dakota*, Civil No. 1196 (D.N.D., filed Nov. 28, 1972).

## Pennsylvania

*Fredrick L. v. Thomas*, C.A. No. 74-52 (E.D. Pa., filed Jan. 16, 1974).

## Rhode Island

*Rhode Island Society for Autistic Children v. Rusman*, C.A. file No. 5081 (D.R.I., filed Dec. 1972).

## Tennessee

*Rainey v. Tennessee Department of Education*, No. A-3100 (Chancery Ct. of Davidson County, Tennessee, filed Nov. 6, 1973).

## Washington

*Education for All v. Seattle Public School District No. 1*, No. 770491 (Superior Court for King County, State of Washington, filed September 6, 1973).

## Wisconsin

*Pantch v. Wisconsin*, Civil No. 72-C-467 (E.D. Wis., filed Aug. 14, 1972).

## OTHER REFERENCES USED

Goldberg, I., Lippman, I., "Plato had a Word for it," *Exceptional Children*, Vol. 40, No. 5, Feb. 1974 p. 325.

Fraser, D., *Perceived Dependence-Independence Derivations and Implications of an Empirically Based Factor in Planning for Residents in Public Institutions for the Mentally Retarded in Massachusetts*, Massachusetts Bureau of Development Disabilities, 1971, p. 85.

## APPENDIX B

## I. EXCERPT FROM MILLS v. BOARD OF EDUCATION RELATING TO DUE PROCESS HEARINGS

## 13. Hearing Procedures.

a. Each member of the plaintiff class is to be provided with a publicly-supported educational program suited to his needs, within the context of a presumption that among the alternative programs of education, placement in a regular public school class with appropriate ancillary services is preferable to placement in a special school class.

b. Before placing a member of the class in such a program, defendants shall notify his parent or guardian of the proposed educational placement, the reasons therefor, and the right to a hearing before a Hearing Officer if there is an objection to the placement proposed. Any such hearing shall be held in accordance with the provisions of Paragraph 13c, below.

c. Hereinafter, children who are residents of the District of Columbia are thought by any of the defendants, or by officials, parents or guardians, to be in need of a program of special education, shall neither be placed in, transferred from or to, nor denied placement in such a program unless defendants shall have first notified their parents or guardians of such proposed placement, transfer or denial, the reasons therefor, and of the right to a hearing before a Hearing Officer if there is an objection to the placement, transfer or denial of placement. Any such hearings shall be held in accordance with the provisions of Paragraph 13d, below.

d. Defendants shall not, on grounds of discipline, cause the exclusion, suspension, expulsion, postponement, inter-school transfer or any other denial of access to regular instruction in the public schools to any child for more than two days without first notifying the child's parent or guardian of such proposed action, the reasons therefor, and of the hearing before a Hearing Officer in accordance with the provisions of Paragraph 13f, below.

e. Whenever defendants take action regarding a child's placement, denial of placement, or transfer, as described in Paragraphs 13b or 13c, above, the following procedures shall be followed:

(1) Notice required hereinbefore shall be given in writing by registered mail to the parent or guardian of the child.

(2) Such notice shall:

(a) describe the proposed action in detail;

(b) clearly state the specific and complete reasons for the proposed action, including the specification of any tests or reports upon which such action is proposed;

(c) describe any alternative educational opportunities available on a permanent or temporary basis;

(d) inform the parent or guardian of the right to object to the proposed action at a hearing before the Hearing Officer;

(e) inform the parent or guardian that the child is eligible to receive, at no charge, the services of a federally or locally funded diagnostic center for an independent medical, psychological and educational evaluation and shall specify the name, address and telephone number of an appropriate local diagnostic center;

(f) inform the parent or guardian of the right to be represented at the hearing by legal counsel, to examine the child's school records before the hearing, including any tests or reports upon which the proposed action may be based, to present evidence, including expert medical, psychological and educational testimony; and, to confront and cross-examine any school official, employee, or agent of the school district or public department who may have evidence upon which the proposed action was based.

(3) The hearing shall be at a time and place reasonably convenient to such parent or guardian.

(4) The hearing shall be scheduled not sooner than twenty (20) days, nor later than forty-five (45) days after receipt of a request from the parent or guardian.

(5) The hearing shall be a closed hearing unless the parent or guardian requests an open hearing.

(6) The child shall have the right to a representative of his own choosing, including legal counsel. If a child is unable, through financial inability, to retain counsel, defendants shall advise child's parents or guardians of

available voluntary legal assistance including the Neighborhood Legal Services Organization, the Legal Aid Society, the Young Lawyers Section of the D.C. Bar Association, or from some other organization.

(7) The decision of the Hearing Officer shall be based solely upon the evidence presented at the hearing.

(8) Defendants shall bear the burden of proof as to all facts and as to the appropriateness of any placement, denial of placement or transfer.

(9) A tape recording or other record of the hearing shall be made and transcribed and, upon request, made available to the parent or guardian or his representative.

(10) At a reasonable time prior to the hearing, the parent or guardian or his counsel, shall be given access to all public school system and other public office records pertaining to the child, including any tests or reports upon which the proposed action may be based.

(11) The independent Hearing Officer shall be an employee of the District of Columbia, but shall not be an officer, employee or agent of the Public School System.

(12) The parent or guardian, or his representative, shall have the right to have the attendance of any official, employee or agent of the public school system or any public employee who may have evidence upon which the proposed action may be based and to confront, and to cross-examine any witness testifying for the public school system.

(13) The parent or guardian, or his representative, shall have the right to present evidence and testimony, including expert medical, psychological or educational testimony.

(14) Within thirty (30) days after the hearing, the Hearing Officer shall render a decision in writing. Such decision shall include findings of fact and conclusions of law and shall be filed with the Board of Education and the Department of Human Resources and sent by registered mail to the parent or guardian and his counsel.

(15) Pending a determination by the Hearing Officer, defendants shall take no action described in Paragraphs 13 b or 13 c, above, if the child's parent or guardian objects to such action. Such objection must be in writing and postmarked within five (5) days of the date of receipt of notification hereinafter described.

## II. TENNESSEE MANDATORY SPECIAL EDUCATION ACTION, DUE PROCESS HEARINGS

*§§ 29-7, Parent's or guardian's right to review—Grounds—Procedure—Promulgation of rules and regulations for conduct of hearings—Judicial review.*—A child, or his parent or guardian, may obtain review of an action or omission by State or local authorities on the ground that the child has been or is about to be

a. denied entry or continuance in a program of special education appropriate to his condition and needs,

b. placed in a special education program which is inappropriate to his condition and needs,

c. denied educational services because no suitable program of education or related services is maintained

d. provided with special education or other education which is insufficient in quantity to satisfy the requirements of law,

e. provided with special education or other education to which he is entitled only by units of government or in situations which are not those having the primary responsibility for providing the services in question

f. assigned to a program of special education when he is not handicapped.

The parent or guardian of a child placed or denied placement in a program of special education shall be notified promptly, by registered certified mail, return receipt requested, of such placement, denial or impending placement or denial. Such notice shall contain a statement informing the parent or guardian that he is entitled to review of the determination and of the procedure for obtaining such review.

The notice shall contain the information that a hearing may be had, upon written request, no less than fifteen (15) days nor more than thirty (30) days from the date on which the notice was received.

No change in the program assignment or status of a handicapped child shall be made within the period afforded the parent or guardian to request a hearing, which period shall not be less than fourteen (14) days, except that such change

may be made with the written consent of the parent or guardian. If the health or safety of the child or of other persons would be endangered by delaying the change in assignment, the change may be sooner made, but without prejudice to any rights that the child and his parent or guardian may have pursuant to this section or otherwise pursuant to law.

The parent or guardian shall have access to any reports, records, clinical evaluations or other materials upon which the determination to be reviewed was wholly or partially based or which could reasonably have a bearing on the correctness of the determination. At any hearing held pursuant to §§ 49 2917—49 2949, the child and his parent or guardian shall be entitled to examine and cross-examine witnesses, to introduce evidence, to appear in person, and to be represented by counsel. A full record of the hearing shall be made and kept, including a transcript thereof if requested by the parent or guardian.

A parent or guardian, if he believes the diagnosis or evaluation of his child as shown in the records made available to him pursuant to the preceding paragraph of this section to be in error, may request an independent examination and evaluation of the child and shall have the right to secure the same and to have the report thereof presented as evidence in the proceeding. If the parent or guardian is financially unable to afford an independent examination or evaluation, it shall be provided at state expense.

The state board of education shall make and, from time to time, may amend or revise rules and regulations for the conduct of hearings authorized by this section and otherwise for the implementation of its purpose. Among other things, such rules and regulations shall require that the hearing officer or board be a person or composed of persons other than those who participated in the action or who are responsible for the omission being complained of; fix the qualifications of the hearing officer or officers; and provide that the hearing officer or board shall have authority to affirm, reverse or modify the action previously taken and to order the taking of appropriate action. The rules and regulations shall govern proceedings pursuant to this section whether held by the state board of education, or by a county, city, or special school district board of education.

The determination of a hearing officer or board shall be subject to judicial review in the manner provided for judicial review of determinations of the state or local education agency, as the case may be.

If a determination of a hearing officer or board is not fully complied with or implemented, the aggrieved party may enforce it by a proceeding in the chancery or circuit court. Any action pursuant to this section shall not be a bar to any administrative or judicial proceeding by or at the instance of the state department of education to secure compliance or otherwise to secure proper administration of laws and regulations relating to the provision of regular or special education.

The remedies provided by this section are in addition to any other remedies which a child, his parent or guardian may otherwise have pursuant to law. [Acts 1972 (Adj. S.), ch. 839, § 8.]

§ 2948. *Rights of parents or guardians to enforce provisions for services.* — *Declaratory authorized.* Nothing in §§ 49 2912—49 2959 shall be construed to limit any right which any child or his parent or guardian may have to enforce the provision of any regular or special educational service, nor shall the time at which school districts are required to submit plans or proceed with implementation of special education programs be taken as authorizing any delay in the provision of education or related services to which a child may otherwise be entitled. [Acts 1972 (Adj. S.), ch. 839, § 8.]

#### THE MASSACHUSETTS MANDATORY SPECIAL EDUCATION ACT, PROCEDURES FOR PLACEMENT (M.G.L.A. CH. 71B (CH. 766A) ACTS OF 1972)

"No child shall be assigned to a special education class unless it is first determined by an evaluation of the child's needs and the particular special education program that the child is likely to benefit from such program; periodically thereafter and in no event less often than annually the child and his program shall be re-evaluated to determine whether said child is benefitting from said program . . ." sec. 2

"No child shall be placed in a special education program without prior consultation, evaluation, re-evaluation and consent as set forth by regulations . . ." sec. 3

Mr. BRADY MAS. Thank you very much, Mr. Shaffer.  
Mrs. Wald?



**STATEMENT OF PATRICIA WALD, ATTORNEY, MENTAL HEALTH  
LAW PROJECT, WASHINGTON, D.C.**

Mrs. Wald. I was one of the counsel in *Mills v. Board of Education* here in the District about 19 months ago. That decision, as Dean Shatter pointed out, extended the *PARC* decision as it applied to retarded children, to every child regardless of the kind or severity of his handicap. This brought in the emotionally physically handicapped, the mentally handicapped or any child regardless of the handicap.

I would like to briefly summarize for the committee what our experience has been with 19 months of implementing the *Mills* decision for whatever light that may throw on ingredients of your bill.

The first point to be made, no matter what a court or legislature says or no matter what the good intentions of following the law, if money is not there, it cannot be allocated. We have seen this unfortunate syndrome in the past 19 months. The school people have admitted publicly and in documentation that indeed children are placed in overcrowded school programs that violate even the union contracts of teachers; that the time limits on placement and evaluation are not met; that there are periodic pockets of children not served at all. Also, there was no money in the tuition fund to meet the costs and in many cases the parents had to provide these funds and many of them could not. In one instance, the hearing officers were not being paid. That fortunately has been remedied.

I would point out we are back in court on bills and compliance. This is an honest desire to obey the decree. Lack of money affects a decree like this in various and sundry ways. Rather than individual children's needs, you find that rarely does the school placement officer say that a child needs a special tutor without a parent going to a hearing. That would require additional money and it would drain money off the general educational funds.

The second point I would make is that where special educational funds have to compete with regular education funds for inadequate total research, there is a continual war between them. The very kind of thing that handicapped children need, total integration in the school system, a feeling of really belonging, is what goes out the window. We saw this happen when a lot of parents were successful in getting Congress to earmark specific funds.

The result was they were regarded very recently by the rest of the school district and the rest of the school system to be for services which before they had given free. I feel a categorical aid program which provides a very definite sum outside the school budget would help to relieve that tension in a very valuable way.

The decrease in loss could not work out adequate funding and categorical funding would possibly be desirable.

Let me very briefly allude to three or four things which have come up in our 19 months which I think should be incorporated in this kind of State mandate or in the law itself. One is the problem of deinstitutionalization. The bill would allow institutional programs to participate in the financial allotment. Of course they should wherever children need to be in institutions. I suggest two caveats, a very close scrutiny of institutional programs before they are allowed to be counted in. We do have special educational programs in general. I think it is

fair to say institutional programs lag behind public school programs. They cannot attract the staff.

Second, I think your bill very commendably militates toward de-institutionalization of children. However, I think I might be even a little tougher and require other than just a statement of policy on the part of the State, some very close scrutiny requiring that as the years go down, either they perform or their financial incentive goes down.

I go to council hearings every year and I hear how we ought to get 400 more kids out of the retarded institutions into the community. Then I look at the statistics and only a very small number are out in the community. I think we have to have a requirement to perform, watch the figures go down, before they can receive the same financial allotment for institutional programs.

I think you need to get at the kind at 2 and 3, the kids with handicaps. They do not have the capacity to learn by osmosis, by TV, or just being around the house. They don't have the capacity for self-education as with other children. We have had a lot of trouble with interpretation of the Mills decree, as to whether the aim is 5 or 3 years old. There are two points of view on that.

I think there is provided a healthy competition in public special education which I think needs to be there. I think if you do not allow some of the money to be channeled to private schools, you find that handicapped kids are pushed into whatever schools the public educational system sees fit to provide for them. What has happened here is our independent hearing examiner has very often awarded grants to public schools on the grounds that private schools are not adequate. I feel a kind of healthy competition as to what can best be done for the child with an independent hearing officer deciding whether a private school can come up to the standards set, is on the whole a healthy thing.

I will conclude by saying we found a great need for an ombudsman for parents beleaguered as to the school system. The parent could not make clear what they wanted. They do not know how to follow through with a large bureaucracy. I would like to see it written into a State's policy that there is an independent ombudsman beyond the school system where parents who really feel they are getting the run-around, really does not know what is happening, can go to obtain the information.

When a parent gets a notice saying your child is going to be transferred into X school and you have a hearing, it is always not clear to them where they go to have the hearing or where they can go to get the independent evaluation. I think the children themselves certainly pass a certain age, have a right to participate in hearings, not just parents. Very often the interest of the parent and the child is not always the same. Sometimes the child may want something and a parent may want to something else. Certainly, at a particular age a child should have his voice heard in the process.

Our coordination with other agencies has been most disastrous. It is not enough to say the agency must coordinate. I would like to see in the plan specified services other agencies are going to furnish.

The Department of Human Resources has, up to this point, refused to pay any money for joint residential or setting up joint programs for the emotionally disturbed child, unless the child had been made a

ward of the court. I have seen tragic situations where the parent would have to go to court, get the child declared a ward of the court in order to get the money to pay for a particular kind of education.

So I would like to see those other departments on the line in that special plan. Again, we have had the situation where contracts for rubella children were held up for months, until the funds ran out.

Up to now, special education has been pretty much considered to be something the departments do not worry too much about. I think every social service agency and every part of the mayor's or the State's budget office realizes they too have an equal responsibility for those children. I think specific requirements in the State plan for putting them on the line could help with that.

Thank you.

[The prepared statement of Mrs. Wald follows:]

STATEMENT OF PATRICIA WALD, ATTORNEY, MENTAL HEALTH LAW PROJECT,  
WASHINGTON, DC

Mr. Chairman, Committee Members, my name is Patricia Wald. I am an attorney in the District of Columbia and one of the counsel for the Plaintiff in the case of *Willy v. Board of Education*, 348 F. Supp. 866 (D.D.C. 1972). Judge Joseph Waddy decided in that case that every school age child, regardless of the severity or kind of handicap from which he or she suffered was entitled to a publicly supported education appropriate to his or her needs. I would like to discuss briefly this morning 19 months of trying to implement that decision.

1. Lack of adequate funds for implementation can corrupt any zero-reject, right to education policy—whether mandated by court or legislatures—in insidious ways. The original defense to the *Willy* suit was the District's lack of funds to educate handicapped children. The court's decision said they must distribute whatever educational funds were available among all children—including the handicapped. The results—despite good intentions and sometimes heroic efforts by many school personnel and sympathetic Board of Education members—has been acknowledgedly inadequate and overcrowded in-school programs for many of these handicapped children who desperately need individualized attention to succeed, delays in evaluation and placement that violate the time limits set in the decree, periodic pockets of children that remain out of school altogether; very little implementation for institutionalized children; inability to pay the tuition grants for private schools that are awarded children by hearing officers under the decree's due process procedures and for a while, nonpayment of the special education hearing officers required by the decree themselves. A year and a half later, the case is back in court with charges of non-compliance with the original decree.

Lack of money affects vital decisions about the education of handicapped children at every level. Knowing there are not adequate programs to serve them or adequate money to pay tuition grants makes school evaluation officers more reluctant to identify children as in need of special help and especially as in need of any special help they cannot get in programs that already exist in the schools. Handicapped children will be diagnosed to fit programs; rather than programs designed to fit handicapped children. It means that children getting along well in private and relatively expensive schools are yanked out into inadequate public school programs to save money. It means the school transportation many special education pupils need is spotty and unpredictable; some days the buses don't come. After experiences with unpaid bills, it means private schools don't want to accept children any more if their parents cannot guarantee the tuition.

It means there is no money for periodic evaluations of both children and special ed programs to see what is working and what is not. A starved education system for normal children is disturbing enough; for those that cannot learn without special help it is disastrous. Special education does cost more money. It requires specially certified teachers; smaller teacher/pupil ratios; special transportation and supportive services; classroom aides; physical and mental therapy; sometimes specially equipped classrooms. When a school system does not have that

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event, they cut corners on diagnosis, placements, and evaluations, no matter what courts or legislatures dictate.

2. Where there is no special source of funds for special education there is a continual war between regular education and special education for scarce state and local funds. Even if parents' lobbying efforts are successful and special education is singled out for needed attention, it pays the price of resentment to the rest of the school family whose support and assistance it needs to do its job. In D.C., when Congress specified that a certain portion of the fiscal 1973 education budget be allocated to special education, the school authorities asserted that it could only be done by diluting or short-changing regular school system needs. The result is the exact opposite of the acceptance and integration of handicapped children into the school system we all feel is so necessary to their well being. D.C. special education officials have even pleaded with parents of handicapped children not to lobby for raises in special education funds without concomitant raises in regular school budget funds, or the gains will be minimal. When school systems receive allotments for special education from nonbudgetary sources, this destructive tension between regular and special education can be markedly eradicated.

3. Having underscored the necessity for enough money to make full right to education laws work and the desirability of subsidizing the special costs of special education from a nonregular budget source, let me suggest a few problem areas that your bill touches on where our experience in the past 19 months might be of value.

#### A. DETERMINING HOW MANY CHILDREN ARE BEING SERVED BY SPECIAL EDUCATION

Figures on how many children are served by special education in the District are hotly debated. The school system claims a 75% or more overall increase since *Walters* to only a 25% increase in funding. Critics say that many of these children receive only an hour or two special help once a week or less and many receive help for only a small portion of the school year. It may be necessary under the bill's definition section to insure that in computing the average excess cost per handicapped pupil figure on which state benefits are to be calculated provision is made for these wide variations in services costs and time allotted to special education for different kinds of handicapped children.

#### B. INCENTIVES TO DEINSTITUTIONALIZATION

I advocate extreme caution in scrutinizing the special education programs for institutionalized children. All too often institutional programs are inferior to community public school programs because of their isolated locations and inability to attract qualified staff. In other cases so-called "structural programs," arising from behavioral modification to operant conditioning to milieu therapy to what appears to the outsider as pure custodial care are passed off as some form of special education. It would be sad if this bill provided any kind of financial incentive to states to keep handicapped children in institutions rather than recruiting them to reevaluate and arrange whenever possible for their education in the community at large. The bill addresses itself to this concern and I commend the requirement for state plans to assess and plan for deduction of the institutional population.

Let me, however, interject a healthy dose of cynicism caught from reading too many state plans about what they intend to do but somehow never get around to doing. The financial allotments in this bill are an ideal vehicle for funding good community programs in lieu of strengthening institutional ones. Let us help solve the forth debate between advocates of institutionalization and critics who say the handicapped will be dumped back into communities without provision for their rehabilitation. Although Section 8(b) of the bill provides for reports to Congress on proposed changes in grant formulas to encourage deinstitutionalization, I would go further and make allotments in encourage

ment does not cost a fraction of what reform schools and institutions for the mentally retarded cost. In the chart attached to S. 6, set out in H. Cong. Rec. (93rd Cong., 1st Sess.) Oct. 4, 1972, the state's excess cost for educating a handicapped child went well beyond special education. Institutionalization of children runs from \$6,000 to \$18,000 per year. The distinction between delinquency and learning disabilities or emotional disorders is well known generally, our experience with disciplinary suspensions under the *Mills* decree has confirmed the need for special education programs and regimens for many of the chronic behavior problem in the schools.

years dependent upon actual reductions of institutionalized children through the creation of community-based programs for their education if needed, or allow only minor saving value for institutionalized programs each year in computing total needs. Educational bureaucrats draw up state plans, but top policymakers and legislators make up budgets and pass appropriations and often there is little contact or community of interest between the two.

A threatened loss of federal money can connect them. In D.C. the effect of *Mills* on the quality of education for institutionalized children or the rate of their deinstitutionalization has been negligible; the institutionalized programs are not operated directly by the Board of Education which is most concerned with the degree and education in institutions is usually subsidiary to custodial or medical needs. The bill's laudable emphasis on cutting down institutional populations needs to be clearly tied to the financial incentives of the funding itself.

#### C. AGES OF HANDICAPPED CHILDREN INCLUDED

I vote with approval that money is provided for educational programs from age 3 on. Our expert educator witnesses were unanimous in their opinion that it is vitally important to begin the formal educational process early with handicapped children. Handicapped children have further to go and they need an earlier start. The *Mills* decree did not specify chronologically ages to be included in the decree's mandate. As a result the school system has interpreted its full educational policy to apply only to the traditional 5 year starting point while the Board of Education endorsed a 3 year starting point. Federal funds for early preschool education programs for handicapped youngsters would be a boon to the development of such programs and to their universal availability to handicapped children.

#### D. PROVISION OF MONEY FOR TUITION GRANTS TO PRIVATE SCHOOLS

Our experience in the District has emphasized—in my view—both the necessity and the problems of making tuition grants to private schools within the authorized area of public funding. From a child's or parents' point of view, I think it is healthy to have a competitive relationship between public and private schools serving handicapped children. Otherwise there is a tendency to push the children into whatever program the public schools can mount with no alternatives if they are not adequate. Under the *Mills* decision parents can obtain a hearing before an independent hearing officer to decide if they should receive a tuition grant to a private school if they are not satisfied with the public school program. This has the effect of making the public school programs for the handicapped toe the mark. On the other hand, D.C. school officials point out that private schools cost more than public programs and drain valuable money off the public schools. In *Mills* it was:

In *Mills* it was the actions of independent hearing officers, set up by the decree, recommending in favor of parents against the adequacy of public school programs in enough cases that precipitated the financial crisis that brought us back to court. Obviously we all favor an ultimate system that integrates handicapped children into the regular public school classrooms to the maximum degree or that provides special help within that system. But there is a real danger that this mainstream philosophy can be used as a coverup for inadequate school programs that do not satisfy these children's real special education needs. A regular classroom without meaningful supportive and can be just as disastrous for a handicapped child as the labelling involved in special classes or schools. The goal is to avoid both extremes and provide incentives for good public school based programs. But part of such a strategy is to provide private alternatives and public school programs can be operated in sufficient quantity and quality to meet the child's needs. In education as in the market, a little competition is a healthy goad to quality service. Again our experience in D.C. has been that the public schools seldom recommend private placements they must pay for, so that some form of independent examiner is necessary to decide challenges to the adequacy of public programs.

Section 701(c)(6) of H.R. 70 makes provision for participation of handicapped children in public elementary and secondary schools. It is not clear, however, whether the law is in option with parents to send their children privately and petition the court system for regular court or whether, as in *Mills*, the school system must make arrangements itself for private placement if it cannot provide appropriate services within the public school system.

## F. CLASSIFICATION OF CHILDREN AS HANDICAPPED

This is certainly one of the thorniest thickets to penetrate. Educators and lawyers are justifiably concerned with the stigmatizing effects of being classified as "special," whether your speciality is being retarded, learning disabled, emotionally disturbed, or whatever, and in being shunted off into a separate educational track. School records are not legally privileged and can crop up later in life as an embarrassing resource for other schools, employer, insurance companies, judges, credit companies, political and legal opponents. One potential problem I see presented by federal financing is an economic incentive to over-classify children under Section 7(a)(5) as "handicapped" in order to collect the special stipend and to segregate into separate programs that can clearly be justified as "special education". Given what I believe is the underlying philosophy of this bill and what was explicitly stated in our *Mills* decree, namely that handicapped children, to the maximum extent possible, should be served according to their needs, without labelling, in regular classrooms with supportive help as needed, great care must be given that the economies of the funding scheme do not militate in the opposite direction.<sup>1</sup>

Specifically, a top-notch regular classroom teacher with some special training and aides ought to be able to handle many exceptional children right in her class so they need not be labelled or segregated at all. But would the school's expense in giving her the special training or the extra classroom help that enables her to let them stay in the mainstream be reimbursable or must both the children and the services be clearly earmarked for handicapped only? I recognize the federal government's need to lay down identifiable standards for expenditures that are caused by children with special problems, but I hope that a school will be given a large amount of elbow room to put its special education money into beefing up regular classroom and staff training so that it can accommodate most children with educational handicaps, and so avoid stigmatizing most of these children in official school records as "handicapped" in order to secure the money to help them.

Words and labels can be important and if the formulation of criteria for inclusion within funding could be stated in terms of children who need individualized or special services of any kind instead of "handicapped" it could affect their later lives, and even their own perceptions of themselves.

## F. CLASSIFICATION PROCEDURES

Section 7(a)(5) of H.R. 70 sets out due process requirements before a child can be classified as handicapped: including notice, hearing, prehearing examination of relevant school records, opportunity for independent evaluation of the child, and an appeal. The *Mills* case laid down similar procedures for classification hearings. In 19 months more than 90 special education hearings and 200 disciplinary hearings have been held under its mandate.

On the basis of that experience I suggest that

(1) an independent hearing officer, not a school employee, is essential to a fair hearing;

(2) the "opportunity" for an independent evaluation means little if parents cannot pay for it themselves or unless provision is made to reimburse indigent parents or arrange for a free and timely service for them; (public clinics have been too overcrowded to do it in time. The same caveat is true for legal services at hearings, certainly outside of large cities where poverty lawyers and law school clinics are not available.)

(3) The hearing should be available at the initiation of the parent who wants something different for his or her child as well as at the initiative of the school who wants to change the placement. Despite the legitimate fears of labelling, most of our DEC hearings have been by parents who wanted

<sup>1</sup> Section 6(a) of S. 6 which makes the presumption in favor of integration into regular classrooms explicit. I would incorporate a like presumption into Section 7(a)(7) of H.R. 70 which provides for periodic evaluation of the adequacy of special education programs. I also think the evaluations done in 7(a)(7) should be by non-school personnel if they are to be regarded as objective.

<sup>2</sup> The bill does not specify if there is a right to be represented by counsel or by a lay advocate at such hearings. There should be such a provision. Our experience is that most parents have no idea how to make an adequate preparation or presentation of their cases when arrayed against school bureaucrats and confronted with official sounding reports on their child.

more special education services for their children, not less, and were fighting the school's refusal to provide these services. Provision should be made for the child himself to participate and make known his views—at least when he is above a certain age, probably 12-13. Parents do not always have, consciously or subconsciously, solely their children's interests in mind; for any fair hearing a hearing officer needs to talk to and appraise the child for himself. Adolescent children ought to be able to participate actively in their own future.

(5) The notice of an intended placement change should be a detailed one if the parent or child is to make a meaningful decision whether to contest it. It should tell why and on the basis of what records or experience a change is sought, what the alternatives to the parents and child are as to different placements with opportunity for site visiting, what specific services will be offered that the child needs in the new setting. We have had some bad experiences in D.C. with boilerplate notices that tell a parent little or nothing about how his child will be benefited by the proposed change.

#### G. PROVISION FOR OMBUDSMAN

Our experience has been that parents of handicapped children—especially poor and minority parents—have a difficult time making a dent in school bureaucracies. Their phone calls are not always answered; their inquiries are sometimes dealt with cavalierly—often they themselves have difficulty communicating their fears, desires and perceptions of their children. We have—and a desperate need for a non-school ombudsman to intervene for them in following through with their complaints and inquiries. In Pennsylvania, the State Association for Retarded Children has performed such a function; here in D.C. several private or quasi-private groups like the Children's Defense fund and the Information Center for Handicapped Children have done this for some parents. But I would like to see this essential function formally recognized and provided for in state plans. It can assist the school system in avoiding unnecessary hearings as well as obviate tragic confusion and frustration of already beleaguered parents.

#### H. COORDINATION WITH NON-SCHOOL AGENCIES SERVING HANDICAPPED CHILDREN

I note that Section 7(c)(15) of the bill would require a state plan to contain a policy for interagency coordination with other handicapped children's agencies. This has been the single greatest problem area in the *Mills* case; achieving proper coordination between the public school system and the Department of Human Resources, and we deal with only *one* city. DHR should be actively cooperating in joint evaluation of children, helping to finance and plan daytime programs where education must be combined with physical or mental therapy, joint financing of the residential private school costs of children who can only be educated in a total 24 hour therapeutic setting, mounting sound educational programs in the institutions for retarded, neglected, and delinquent children. Instead we have had almost 19 months of bickering between the two agencies. I know of children who had to be declared wards of the Department (with attendant stigma) before DHR would help contribute to the cost of educating them in private residential schools.

Nor have there been any jointly financed programs for emotionally disturbed children—the most difficult group to deal with in the regular school setting. I suggest that more than a statement of policy in state plans may be necessary to pull off the required degree of responsibility-sharing between all the agencies who treat handicapped children. Non-school agencies should be required to commit themselves in unambiguous language in the plan as to what specific services and staff they are going to provide and pay for relating to educational programs and that they should be scrutinized frequently to see they are *doing* it. Similarly, we have had bad experiences with special education contracts held up for intolerably long periods in executive management and contract offices with the result that the service contracts fell through, depriving handicapped children of needed services. There should be requirements in a state plan for assuring

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Where any child is a ward of the state, without involved family, he needs a special advocate to plead his case. The state plan should identify how such an independent advocate will be made available to a child who receives notice of an intended change in placement or who wants to initiate one himself. The advocate should not be an officer of the custodial or guardianship agency or the school system. See Section 6(a)(4) of 8-6.



that contracts, requests, etc., in the care of handicapped children will be administratively processed within reasonable time limits. Here again an ombudsman who is truly a child advocate can be an invaluable source for finding out where services are deficient and where children fall between the cracks.

No matter how bureaucrats complain to you privately, they present a united front to legislatures and to federal funders. Any federal program to help handicapped children has to have the capacity to go beyond the glowing language of proposals and annual reports to see what is really happening, and a built-in independent ombudsman child advocate can be the point of entry.\*

I hope these comments have been helpful. I might close on one observation that no one works in this field without becoming emotionally involved. I think this bill is of critical importance; it represents an attempt to put teeth into legal guarantees to every child of his or her *place in the sun*. Few accomplishments are more important.

Mr. BRADENAS, Thank you very much.  
Mr. Hollingsworth?

**STATEMENT OF DONALD M. HOLLINGSWORTH, ATTORNEY, MEMPHIS & SHELBY COUNTY LEGAL SERVICES ASSOCIATION, MEMPHIS, TENN.**

MR. HOLLINGSWORTH, I wish to extend greetings to you in behalf of the Coalition of Parents for the Handicapped who have gotten together to push for increased funding. I appreciate very much your invitation to be here. My remarks will be made on behalf of the clients I represent, as well.

While I have been involved in representing handicapped clients suffering from educational discrimination for the past 18 months, I wish to emphasize my experience in this matter is not solely limited to this. I did work for a couple of years for severely handicapped in Dallas, Tex. These children shared one common problem, that was failure in school.

Tennessee has one of the best and most comprehensive laws for the education of handicapped children in the United States. However, there have been substantial delays in the enactment of this law since April 1972. These delays are going to continue unless more money is put into the law. At present, approximately one-half of Tennessee's 115,000 handicapped children are not receiving any special educational services. An unknown number are not receiving any education whatsoever. Of the approximately 60,000 or 65,000 handicapped children, many of them are getting totally inadequate services and there is no doubt in my mind, Tennessee is still getting the leftovers.

It has been mandated the Board of Education is to provide educational services no later than this fall. Many parents and educators believe this continued discrimination will only end when the State or Federal court orders it to end and a redistribution of educational funds is made. As to the lawsuit that is pending, without going into much detail, the thrust of the Rainey case thus far has been implementation of the planning and regulatory mandate. Within the near future, the lawsuit will be amended to join all of the local school systems as defendants and to add claims for relief based upon the U.S.

\*I would also commend to the Committee's attention the provision in S. 6 Section 3(9) and (10) requiring an individualized written plan agreed upon between school authorities and parents for each child's special services, setting out the specific services to be awarded, long range goals, anticipated duration of such services and objective evaluation of whether the goals are being achieved.



Constitution as well as the Tennessee law. This action reflects the fact that my client, as well as other parents, will no longer be placated by the argument that education for their children means a reduction of educational services for normal children. They will be asking the court to bear down pretty heavily on these local school systems. There are many issues involved in the lawsuit in Tennessee. We have been through those other issues such as the census of the handicapped, the due process provision of the Tennessee law, which is an excellent one, and the Chancery Court has ordered the State defendants to implement it by August 1971. The same is true of new pupil evaluation regulation with the requirement that I.Q. tests shall not be the primary factor in the evaluation of handicapped children.

The financial situation in Tennessee is disastrous. There is no doubt in my mind that money is the dominant factor in the struggle to end educational discrimination against handicapped children. This belief is shared by most educators and government officials in Tennessee, including Gov. Winfield Dunn.

Tennessee's Commissioner of Education, Dr. Benjamin Carmichael, requested \$26 million in new money in his 1971 budget request to the Governor's office. However, the Governor cut this to \$5.2 million in new money for implementation of the mandatory law. The excess cost needs for this coming year were set at \$13.6 million and they have been cut by \$10 million and that is going to mean a lot of lost lives and school districts. The Coalition for the Handicapped, a newly formed group of parents, educators, and friends of handicapped persons in Tennessee, has requested the Governor and the State legislature to restore the cut funds. The response, unfortunately, by the Governor and others, is "where will the money come from?" We hear this over and over again. Tennessee was estimating a \$60 million State surplus at the end of this fiscal year. Yet now I am told that was an overestimation which will not materialize due to the current economic crisis.

Commissioner Carmichael has stated under oath in the Rainey case that if the rate of new money increase remains for the next few years at the level of the Governor's 1971-75 budget, it will be 5 to 10 years before the Tennessee law is implemented. This would mean a continued denial of the right to an equal educational opportunity to thousands of handicapped children.

I would just like to state any Federal legislation contain provisions for due process and also have some requirements as far as the evaluation of tests used. I also agree with the administrative costs.

I thank you for listening to me and I say this, my clients and I would be grateful to see the end of litigation in Tennessee. It is just that at this time it does not look as though it will stop.

Thank you.

[The prepared statement of Mr. Hollingsworth follows:]

STATEMENT OF DONALD M. HOLLINGSWORTH, ATTORNEY, MEMPHIS AND SHELBY COUNTY LEGAL SERVICES ASSOCIATIONS, MEMPHIS, TENNESSEE

#### INTRODUCTION

Chairman Brademas and Members of the Select Committee on Education: This statement is made upon the behalf of Tennessee's handicapped children and youth, whom myself and two other attorneys are representing in a

class action in the Chancery Court of Davidson County, Tennessee. *Ramen et al. v. Tennessee Department of Education et al.* I am a staff attorney with the Memphis and Shelby County Legal Services Association, and I have been representing handicapped clients suffering from educational discrimination for the past eighteen (18) months. I appreciate your invitation to present oral and written testimony in regard to H.R. 70.

Tennessee's Mandatory Education Law is one of the best and most comprehensive laws for the education of handicapped children in the United States. (Tennessee Code Annotated 49-2912 thru 49-2959). However, there have been substantial delays in the implementation of this law since its enactment in April, 1972. These delays will continue unless the necessary funding is forthcoming. At present, approximately one-half of Tennessee's 115,000-plus handicapped children are not receiving any special education services, and an unknown number are not receiving any education whatsoever.<sup>1</sup>

The following information is presented for the purposes of explaining the education situation of handicapped children in Tennessee and demonstrating the urgent need for Federal funds. In order to place this statement in its proper context, several premises (which are shared by state education officials in Tennessee) should be stated:

(1) Handicapped children have a constitutional and moral right to an equal educational opportunity.

(2) All children can benefit from an appropriate educational program.

(3) Almost all handicapped children can live normal, productive lives if they are provided with an education; they can hold jobs, pay taxes, etc.

(4) The cost of public assistance and institutionalization for handicapped persons is far greater than the cost of special education for children.

(5) The financial resources of Tennessee are insufficient to create the necessary educational services for handicapped children.

I wish to emphasize that my interest and experience in this matter are not limited to the legal aspects. Prior to my graduation from Vanderbilt Law School, I worked for two years in a program for severely emotionally disturbed children in Dallas, Texas. These children, ages 8 to 16, were of average or above intelligence, and in addition to their emotional handicap, they shared one common problem: failure in school. Most of the children who participated in the program were able to return to school, graduate therefrom, and become productive human beings. Further, their effect on me as a person and a future attorney was profound.

#### III. THE LEGAL SITUATION IN TENNESSEE

All handicapped children<sup>2</sup> in Tennessee, ages 4 to 21, are guaranteed appropriate educational services no later than the school year beginning in the fall of 1974 (T.C.A. 49-2934). This deadline will be met by few, if any, of the school systems in Tennessee. Many parents and educators believe that this continued discrimination against handicapped children will end only when the state or federal courts of Tennessee order a redistribution of education funds.

Tennessee's Mandatory Education Law for Handicapped Children and Youth has been the subject of two lawsuits. The first was a mandamus action filed in April, 1973 against the Memphis City Schools for its failure to carry out two of the initial implementation phases of the Mandatory Education Law: census of handicapped children, and training of teachers and teacher aides. It should be noted that no school system in Tennessee had complied with these statutory

<sup>1</sup> The 115,000 figure is based upon national prevalence figures for ages 5 through 18. When the age range is increased to include ages 3 through 21, the number of handicapped children who need special education is increased significantly. There are approximately 87,000 children in Tennessee, ages 5 to 18, with a verified handicapping condition. I am certain that Tennessee's education officials will serve ages 3 through 21 in accordance with H.R. 70 if the funds are available. The Tennessee law does mandate services for ages 4 through 21.

<sup>2</sup> Handicapped child means handicapped children and youth between the ages of four (4) and twenty-one (21) years inclusive who have been certified under regulations of the state board of education by a specialist as being unsuited for enrollment in regular classes of the public schools or who are unable to be educated or trained adequately in such regular programs without the provision of special classes, instruction, facilities or related services, or a combination thereof. This term includes the educable, trainable and profoundly retarded, the speech and/or language impaired, the deaf and hearing impaired, the blind and visually impaired, the physically handicapped and/or other health impairments including inborn and hospitalized and pregnancy, the learning disabled including perceptually handicapped, emotionally conflicted, functionally retarded, and socially maladjusted, the mentally handicapped, and the intellectually gifted, and any other child whose needs and abilities cannot be served in a regular classroom setting. T.C.A. 49-2914 A.

mandates, the primary excuse being a lack of funds. The Chancery Court in Memphis ordered the City Schools to conduct the census and training programs, said order having a state-wide impact. Even though there is a need for revision of the census in many local school systems, Tennessee does have its first state-wide census of handicapped children.

In November, 1973, *Rainey v. Tennessee Department of Education* was filed in the Chancery Court of Davidson County (Nashville), Tennessee. The named defendants are the State Commissioner of Education, three of his assistants, the Governor and the members of the State Board of Education. The six claims for relief involved the defendants' failure to fulfill specific statutory mandates, including the preparation of the Comprehensive State Plan, the establishment of the Division for the Education of the Handicapped, and the enactment of new testing regulations. Two Court orders were entered in December, with the Court retaining jurisdiction pending satisfactory performance by the defendants.

The thrust of the *Rainey* case thus far has been implementation of the public and regulatory mandates of the Mandatory Education Law. Within the near future the lawsuit will be amended to join all of the local school systems as defendants and to add claims for relief based upon the U.S. Constitution as well as the Tennessee law. This action reflects the fact that my clients (as well as other parents) will no longer be placated by the argument that education for their children means a reduction of educational services for "normal" children. Thus, the plaintiffs will be asking the Court to order each school system in Tennessee to spend the necessary money to educate all of its handicapped children.

It is obvious that there are many issues, in addition to an equal protection claim, involved in a right to education lawsuit. As indicated supra, the Tennessee law covers these other issues, and the successful mandamus action and the ongoing *Rainey* case address them. The due process provision of the Tennessee law (review of placement) is an excellent one, and the Chancery Court has ordered the defendants to implement it by August 1974—regardless of cost. The same is true of new pupil evaluation regulations, with the requirement that IQ tests shall not be the primary factor in the evaluation of handicapped children.

Some persons argue that even with the necessary funds and judicial or statutory deadlines, there is a shortage of trained personnel to teach children with various kinds of handicaps. The argument has been made for years, and while it may have had some validity in the past, it is now without merit. During the past two years, there has been a tremendous increase in the number of college and graduate students in Tennessee taking special education courses. Further, there are in-service training programs for regular classroom teachers being conducted even in the rural areas of Tennessee. The issue is not time, but money.

### III. THE FINANCIAL SITUATION IN TENNESSEE

There is no doubt in my mind that money is the dominant factor in the struggle to end educational discrimination against handicapped children. This belief is shared by most educators and government officials in Tennessee, including Governor Winfield Dunn. There seems to be several alternatives for the future:

- (1) Increase state and local taxes
- (2) Reallocate the limited state and local tax revenues
- (3) Provide federal funds to supplement state and local dollars
- (4) Continue the discrimination

Tennessee's Commissioner of Education, Dr. Benjamin Carmichael, stated last month that it would take \$52 million in new state funds to provide special education services for all of Tennessee's handicapped children by the fall of 1974. The Commissioner requested \$26 million in new money in his 1974 budget request to the Governor's Office. However, the Governor's budget for 1974-75 fiscal year contains only \$5.2 million in new money for implementation of the Mandatory Law. (Administration officials state that there is also a three to five million dollar increase in new money due to planned reallocations of teacher positions for next September.)

Approximately one-fifth (1/5) of Tennessee's handicapped children reside in Memphis, Tennessee. The Memphis City Schools have the best special education program in the State, including the necessary delivery system of resource teachers, attendants, evaluation center, etc. Nevertheless, the Memphis City Schools will need over \$3 million in new state money for fiscal year 1974-75. Under the Governor's budget, this money will not be forthcoming.

The Coalition for the Handicapped, a newly formed group of parents, educators and friends of handicapped persons in Tennessee, has requested the Governor and the State Legislature to restore the cut funds. Unfortunately, the response by the Governor has been "where will the money come from?" Administration officials had been estimating a \$60 million state surplus at the end of this fiscal year. Last week one legislative leader stated that this surplus (as well as the heretofore expected increase in State revenues next fiscal year) will not materialize due to the current economic crisis. Further, it should be noted that the Governor's 1974-75 budget was based on the estimated \$60 million surplus for this fiscal year.

Thus, the financial outlook for the education of Tennessee's handicapped children is a dim one. Commissioner Carmichael has stated under oath in the *Ramey* case that, if the rate of new money increase remains for the next few years at the level in the Governor's 1974-75 budget, it will be 5 to 10 years before the Tennessee law is implemented. This would mean a continued denial of the right to an equal educational opportunity to thousands of handicapped children.

#### IV. COMMENTS ON H.R. 70

Even though Tennessee's Mandatory Education Law contains a comprehensive state plan requirement, a state advisory council, due process procedures, etc., I believe it is essential that any federal legislation include provisions which will assure that the educational rights of these children are enforced and that the funds are utilized properly. I agree especially with the one percent limitation on state administrative costs.

I hope the final legislation will include a provision which requires each state to educate its handicapped children in the regular educational environment whenever such is possible and beneficial. Tennessee's law contains this requirement. Many state and local educators in Tennessee have stated that most handicapped children can function in the regular classroom with resource aides when needed. This is especially true in regard to handicapped children who receive special educational services in their early years. Of course, it is obvious that severely handicapped children will require self-contained (separate) classrooms for the most part. The point of emphasis is that the traditional exclusion of most handicapped children from the regular educational environment is detrimental to the children and is a form of illegal discrimination.

If the Committee so requests, I will be glad to supply additional information and comments on these and other provisions.

#### V. CONCLUSION

Our handicapped children cannot wait. Those who are five or six years old now, for example, will have good odds of realizing their potential if they receive the needed educational services. If the same children are made to wait several years for special services, they will be far less responsive because of their years of frustration and failure.

My clients and I would be pleased to see the end of litigation in Tennessee. However, parents will no longer be distracted by the hollow promises of government officials and state laws. They pay taxes, and they are becoming aware that their children have a legal right to an education.

I urge you to give serious consideration to H.R. 70 and hope that the urgently needed federal excess costs funds will be forthcoming during the next fiscal year.

Mr. BRADYMAS, Thank you very much.

Let me at the outset express my warm appreciation to all three of you. I think the statements you have given us on this bill have been extremely useful in insuring the legal right of the handicapped.

Mrs. Wald has raised a number of crucial policy questions with

<sup>1</sup> To the maximum extent practicable, handicapped children shall be educated along with children who do not have handicaps and shall attend regular classes. Impediments to learning and to the normal functioning of handicapped children in the regular school environment shall be overcome by the provision of special aids and services rather than by separate schooling for the handicapped. Special classes, separate schooling or other removal of handicapped children from the regular educational environment, shall occur only when, and to the extent that the nature or severity of the handicap is such that education in regular classes, even with the use of supplementary aids and services, cannot be accomplished satisfactorily. T.C.A. 49-2013 B.

regard to the legislation, I think what you have had to say has been most illuminating.

Let me put two or three questions to you, Dean Shaffer, one of the points you raised, the right to an education as a Federal constitutional right, I wonder if you could elaborate on that a little, as distinguished from a State right or as distinguished from a Federal statutory obligation? Would you comment on that? What I am trying to get at is the extent to which one can assert the right to an education as a constitutional right for a handicapped child.

Mr. SHAFER. The essential origin in most of those cases, Mr. Chairman, does not apply to the District of Columbia, the equal protection and due process clauses. Under the *Brown* case, it was determined a State cannot provide services to one and deny it to another.

Mr. BRADY. One other question which has to do with any comments you may have on the legal problems with respect to the confidentiality of children involved in programs for handicapped children.

Mr. SHAFER. That is essentially a part of the due process rights of the family. These things need not be public, but customarily hearings are public. One would have to be very careful simply because, unfortunately, the label of retardation is still a stigma in our society.

Mr. BRADY. The third and final question has to do with a statement in your testimony concerning the Louisiana case which you cited guaranteed the right of all mentally retarded children to an appropriate program of free public education.

We put to you the question, are most of the court benefits that we have been discussing here declaring that handicapped children are entitled to educational programs appropriate to their needs with the simple acceptance, for example, of a retarded child in a normal school system?

Mr. SHAFER. Assigning him to a school would not satisfy what these court decisions have required. As a matter of fact, it may be harmful for the child to do that. The judges have obviously, to the extent they could, avoided being decisionmakers as to what is an appropriate education for a handicapped child. What they seem to have done is to provide an elaborated system. The alternative is to have someone like a judge having to be educated on the great and difficult issues that Mr. Obrtman is talking about that they are beginning to work out in Pennsylvania.

Mr. BRADY. Mrs. Wald, I was struck in your statement by one of the points you made with respect to the classification of children who are handicapped which of course is a major concern to all of us interested in this problem. In your testimony at the bottom of page 22 you state that words and labels can be important in terms of children who need individualized or specialized services of any kind, and so on. Were you meaning to suggest by that sentence that we ought to move to a completely different definition of handicapped, at least for purposes of this legislation? What you have suggested is an even broader one than the phrase "handicapped." Is my question clear?

Mrs. WALD. Yes, I was suggesting that just the word "handicapped," even though it is a short term code word for including a lot of children, it can become a kind of label that attaches onto a kid in his records and later crops up throughout his life. Even semantically,

even if you did not call him a handicapped child but called him a child who needs individualized help, realizing all words can later be converted to a label, but I still think the further we can get away from a specialized identification, handicapped, et cetera, the better it would be. I understand the problem from the Federal Government's standpoint. I realize there are lines that have to be drawn, but the farther away we can get from thinking of kids as being handicapped and special eds, different, even though we do have to draw these lines, the better off we are.

This has come up with the District of Columbia Board of Education. The way they are going to go is to put more and more money into training the regular classroom teacher with special training so she can handle not only the regular kids but large numbers of kids with moderate degrees of learning handicaps, et cetera. So she is really a combination teacher rather than being called a special ed teacher. It is a concern I have.

Mr. BRADENAS. I would just make an observation that earlier in your statement, in the same paragraph on the same problem of the matter of classification of children, you speak about the economic insensitivity to over-classify children in order to collect the stipend. So you see how important is the question of definition and rather than moving in the direction, and I do not want to misrepresent what you said, I thought your statement on page 22 was suggesting we might want to define and delineate much more specifically the definition of the phrase "handicapped," in order to meet the problem.

Mrs. WALD. I think you have answered your own question.

Mr. BRADENAS. Mr. Hollingsworth. Why can't you use revenue sharing?

Mr. HOLLINGSWORTH. I do not know of any revenue-sharing moneys being used for handicapped children. Education is at such a low level already that when parents have handicapped children, they are asking for their children to be included in the educational programs. You have a lot of problems because the education is at such a low level.

Mr. BRADENAS. I would just make an editorial observation, but one of the reasons a lot of the Members of the House of Representatives, including the chairman of this committee, voted against revenue sharing was a fear on our part that State and local governments would not give adequate attention to meeting the needs of groups who former Secretary Richardson has described as being vulnerable, the handicapped children, black people, women, the elderly and you may not be aware, our colleague, Congressman Pepper, told this committee that the General Accounting Office had reported that less than 1 percent had gone to the elderly. So we may have a similar problem here and I would hope that my argument could be defeated by the moves of the State of Pennsylvania.

Thank you very much.

Mr. Eshleman?

Mr. ESHLEMAN. I would like to direct a question to Mrs. Wald regarding the institutionalization of children. I am interested in your thoughts.

At some point in that process, somebody has to make the final decision. I realize sitting down together will be the parents, psychiatrists probably, several teachers, they are going to be around the table. They

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may meet 1 hour or several days, but at some point somebody has to make the final decision. Who should that be and should that be written into Federal legislation, or should we be moot about it and if we are moot about it, who is going to make the final decision?

Mrs. WALD. Generally, the final decision is made by the parents, in the sense I know of few institutions that will not release the child. They are generally there voluntarily. I know very few contested decisions. If the parent is willing to take the child back into the community and can provide for him, almost universally the State procedure for allowing a child in or out of the institution is such that the child can be released.

Mr. ESHELMAN. Would this also include emotionally disturbed children?

Mrs. WALD. Most emotionally disturbed children are a quasi-form of a handicapped condition unless they have gotten in trouble with the law and have gone into the delinquency process. Then the court decides when they will be ready for release. I do not think the Federal law should try to impose legislation along this line. The thing follows, when the resources are in the communities, the institutions are usually pretty happy to let the kids out.

I think the bill just by creating and motivating the building of those resources in the community will cause us to not worry about laying down a formula.

Mr. ESHELMAN. I have to agree with you that the final decision rests with the parents more than anybody else. I would be interested in hearing from any of the three members of the panel as to whether this should be spelled out in legislation.

Mr. SILVER. The best legislation can do is to provide for procedures. That provision in the bill might be more elaborate.

Mrs. CHISHOLM. I am going to take advantage of the absence of the chairman to ask one question.

Concerning the question of State's right versus Federal rights, the Governors have been consistently saying they have not been able to develop programs because of the absence of funds. We also realize that particular segment of society is relatively helpless in that they are pressuring for funds.

How are we going to be able to circumvent this in view of the fact this is really a national problem and Governors, with the amount of funds they have, are not going to be able to meet all these needs unless the Federal Government makes it mandatory?

Should it be a mandate on the part of the Federal Government that this become policy without regard to State's rights?

Mr. HOLLINGSWORTH. I agree, it should be.

Mrs. WALD. My answer is yes, absolutely. Through HEW and through bills like this, we ought to have a national policy that every child shall receive a publicly supported education.

Mrs. CHISHOLM. But also to follow it up with funding, correct?

Mrs. WALD. Yes.

Mr. BRADMAN. Mr. Biaggi?

Mr. Biaggi. I fully agree that retarded and handicapped children have a legal right to educational and developmental programs. In fact, I recently handled a case on behalf of a Miss Adrienne Rinelli, a resident of the Willowbrook State School in New York, which was

notorious for the lack of treatment, care, and rehabilitation it provided. It was nothing more than a warehouse for human beings.

After a 5-week-long trial, which I conducted myself, we received a most welcome decision from the court: Miss Rinelli was guaranteed her right to proper care, treatment, and full educational and developmental programs.

Such a decision is consistent with decisions in similar cases in Alabama and elsewhere in the country. The courts are beginning to recognize the rights of the mentally ill, retarded, and the handicapped. We here in Congress, too, must pursue the matter and approve laws that further guarantee that every child will get the education he or she needs regardless of their health, physical condition or racial or ethnic background.

Mr. BRADYMAS. The Chair would like to conclude our hearings this morning with three observations. One is to renew the warm appreciation of the committee; second, to observe that, because we have another panel yet to hear from today, the subcommittee will meet at 2:30 this afternoon to conclude today's hearings. Third, there will be hearings in this room tomorrow, not on this legislation but on the general subject of the application of technology to the rehabilitation of handicapped persons. There will also finally be a resumption of hearings on H.R. 70 on Monday, March 18.

Once more, we are grateful to all of you for having taken time to be with us today.

The subcommittee is adjourned.

[Whereupon, at 11:25 a.m., the subcommittee was in recess, to reconvene at 2:30 p.m., the same day.]

#### AFTERNOON SESSION

Mr. BRADYMAS. The Select Subcommittee will come to order for further hearings relating to H.R. 70 and related bills to provide services for handicapped children.

This morning, the panel heard from Mr. Donald Carroll, Dr. William Ohrtman, as well as a panel of attorneys concerned with the legal rights of handicapped children.

This afternoon, we shall hear from a panel of parents of handicapped children. We shall hear from Marilyn Boerum, Muriel Lee, and Samuel Teitelman.

We are very glad to have you here this afternoon.

Mr. Teitelman, I understand you are going to present your two colleagues.

#### STATEMENT OF SAMUEL TEITELMAN, NEW HAVEN, CONN., ACCOMPANIED BY MARILYN BOERUM, SILVER SPRING, MD., AND MURIEL LEE, NASHVILLE, TENN.

Mr. TEITELMAN. On my left, Mrs. Marilyn Boerum, from Maryland; and on my right, Mrs. Muriel Lee, from your home State of Indiana. I am from Connecticut. My name is Samuel Teitelman.

I suppose my credentials qualifying me to speak in behalf of the parents' view is that I am, myself, a parent of a severely mentally retarded youngster. I find myself a little bit at a loss but I would like



to start right out by indicating that we are in support. I am in support and parents I have spoken to in my area are in support of H.R. 70. I support it because it addresses itself to what I guess I would call the problem of quality of life. When we talk of quality of life, I think we are talking of the full concept of creating an atmosphere individuals can live in, in the most possible state of freedom. When we talk of the process of education, we talk of a process that generates the greatest possibility for one's self expression in the area of freedom.

So it is not just monetary support itself which is critical to me, but it is the fact a priority is established which places very high on the scale of priorities, the element of the freedom of one's personality and the quality of life for all citizens, in this instance, most particularly for handicapped children.

Specifically addressing myself to the bill, I think the concept of de-institutionalization is something which we heartily approve of for reasons I am alluding to. I think this bill will help accomplish this de-institutionalization we are looking for. It will do it because money plays a big role in the capacity to accomplish certain ends and the funds which would be made available. I won't address myself to the formulas in the bill. I am really concerned more with the end goal which is the funds which will help keep children at home or close to home instead of sending them off into an institution of substantial size where very often they get lost in the shuffle of a large activity.

It will also have the effect of bringing back into the community children that are already institutionalized. I know in Connecticut we are now involved in a kind of substantial program to establish a group home setting for a large number of children who are now in large institutions in the State.

I think the fact we can get an awfully lot of kids back into the community is a worthy act. The particular provisions of this bill that I find delightful are that there is reference to a requirement of having parents participation on the State advisory commission. It provides that parents will participate. I think that parents have a tremendous input to make in the development of programs and in the evaluation of programs in the area of special education.

I would only suggest that we go one step further and that is to provide a system whereby the political processes are minimized as much as possible in the appointment of the parents represented on the commission. I think that the independence of thought, the independence of evaluation and judgment on the part of parents participating must not be impaired by political process that will impair their judgment. Therefore, very specifically, with regard to the bill, I find it rather difficult to identify myself at a national level because my concerns are localized. I live back home and my son lives at home with me and my family, and the problems which arise are essentially local in nature. I know that the day-to-day problems we face are serious and the goal of H.R. 70 is great in that context, in at least making available funds to accomplish the end goals to make life better for our community.

If I may, Mr. Chairman, I would like to refer to some of the things that have concerned us as parents back home. Some of those very frequently are related to money problems. One is a phase-over to current financing, to excess costs. We find our State going in that direction. There is a bill coming before our legislature which hopefully will

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phase-over within relatively a few years. However, the funds that will flow from H.R. 70 would assist in that type of thing.

We also are concerned with not having a 9-month program as most schools, but we are interested in a 12-month program. With normal children, having a 3-month vacation in the summer is in and of itself an educational process. They learn for themselves, participate in recreational programs that are available, summer educational programs that are available and their whole growth pattern continues throughout the summer months. Not so with the handicapped child who can regress if he doesn't have a program.

I would suggest generating a program, a 12-month program.

We are also in favor of regional diagnostic clinics to determine the validity of the programs that have been devised, the implementation of programs and the State board of education can do the job mandated to it.

There were references this morning that the courts are setting ground rules and making interpretations as to rights of children to education. But if the money is not there, the programs are not there. So I would say we have to see that the money is there and that the proper program is there. In that regard, I would like to say I do not know if it belongs here in this kind of bill, but I would like to express my sentiments. That is, to prohibit the exclusion from classes of anybody for any reason, there must be an alternative to the normal classroom or are these children who are considered to be excluded from their classroom. We see it as a vehicle of a business which teachers and managers of educational programs use as a cop-out to an alternative educational solution.

These are some of the things we are concerned with. In this whole area of what we need money for, we have a tremendous lack of adequate ancillary services, speech therapists are very hard to come by, and if you have any type of direct personal experience with the inability of children to speak, you can appreciate how important it is to give those children who have those difficulties the services that make it more possible for them to get expression, more full expression to their own lives.

The same is true as to physical therapists who are an extremely important element in the development of a person's ability to develop physically.

I know when my son was just beginning to walk, just having that extra little bit of aid at the right time made the difference between his ability to walk at age 3 and his ability to walk at age 5, or maybe not at all.

Also, we need money for prevocational purposes. I visualize the H.R. 70 funds as helping in this area. I would suggest that whatever is developed, the concept of consumer participation and parent participation be a must. As I see them, informed and knowledgeable parents, of which there are many who can chop away their own emotionalism in looking at the programs and determine what they feel to be adequate and successful parents. I think it should be encouraged that parents and consumers participate in the evaluation of the programs and the development of their programs.

This morning, there was a suggestion made by one of the attorneys that the concept of an ombudsman be built into the system. I would personally heartily endorse that because it is almost an impossible

task for an uninformed and passive parent to get through a bureaucracy, if you will, which is not specifically interested in the specific problem. If we can establish an ombudsman type of office which will act as a vehicle by which parents can approach agencies responsible for the delivery of services, I think that would be a very valuable service.

There was a comment made this morning as to all social service agencies being responsible for education. I think this is valid. My own experience indicates that oftentimes the large institutions are more concerned with warehousing people. I am not questioning the motives, but I am saying the conditions are such, the money is not there with which to do anything other than to warehouse people. This morning there was a considerable amount of coverage items that we are concerned with by way of rights and needs of children such as costs, and numbers. As a parent, I am less concerned about those and I am sure professionals must be but I am concerned as a parent, that the quality of education be high, be strong, that the availability of education be there and that every effort be pursued in order to develop and establish what I started off initially as saying was the concern for the quality of life.

That is all I have to say by way of oral comments. I know your committee has received a statement for the record which I have submitted.

[The prepared statement of Mr. Teitelman follows:]

STATEMENT OF SAMUEL TEITELMAN, NEW HAVEN, CONN.

Mr. Chairman, it is a distinct honor for me to appear before you and this Committee today. I am aware of the work done by this Committee on behalf of handicapped people, particularly handicapped children, and I congratulate you for your efforts.

The Congress and the Federal Government have come to realize the tremendous task heaped upon local school systems to provide educational opportunities for handicapped children. We all know it is much more expensive than educating a normal child. When one looks at the myriad problems facing education in general today, it is easy to understand how difficult it is for state and local government to bear the full brunt of this endeavor.

Historically, handicapped children have usually been last in line for most social services. Their needs were considered too complex, too costly and not cost efficient. It was not until the parents of these children refused to accept excuses that education programs began to sprout up in the early 1950's. During this time, parents of handicapped children began to link in a common cause, to seek educational opportunities for their children.

Through organizations such as the National Association for Retarded Citizens, thousands and thousands of parents have banded together to seek increased services for their children.

It has been a slow process. By demonstrating the efficacy of these programs, by operating them themselves with donated funds, by influencing school boards and legislators and by educating the public, educational programs have progressed. Most public school systems are now providing mandatory public school education for so called "educable" or mildly retarded children. Many are providing public school education for "trainable" or moderately retarded children. Most, however, do not provide public school opportunities for the severely and profoundly mentally retarded.

Again, parents themselves had to set up programs for these children. Using church basements and other facilities we have proven that these children can be educated and trained to be more independent and less a burden on their families and society. Slowly, but surely, we are convinced that every child will have available to him what is rightly his, a free public school education.

From a parent's perspective, this has been a terribly difficult fight. This is especially true for those parents whose children are now teenagers and young

adults or whose children are severely or profoundly retarded. These parents have had to bear the great burden of seeking educational opportunities for their children. These parents, however, are far luckier than those whose handicapped children have gone on into adulthood without any education or training at all. How terribly frustrating it is to see one's own child being robbed of a chance to learn, to mingle and make friends with his peers and to succeed or fail on his own efforts.

Parents of handicapped children are now going as far as they must to provide services for their children. You are well aware of the many "right to education" class action suits currently in process in courts all over the country. The plaintiffs in these cases are parents who refuse to wait any longer for government to act. It is unfortunate that we have had to rely on the courts to obtain what rightly belongs to our children, but it is now clear to all that we no longer can allow our handicapped children to be treated as second class citizens. We have nothing to lose and everything to gain from this effort. It is becoming very clear to us that someday, soon, all our children will be in public schools. We will have scored a great victory, but the job will not be complete.

In order for this to transpire, a tremendous amount of financial resources will be necessary to operate these programs. Local and state governments will do their share, but they certainly cannot be expected to fully finance this effort. The Federal Government must increase its commitment if we are to realize the progress which we envision. Your bill, H.R. 70, would revolutionize the Federal Government's involvement in education for the handicapped. If this bill passes and receives the appropriations necessary to carry out its intent, our dreams of full educational opportunities for all children would become reality, not in twenty years, but in a short period of time.

Think, for a moment, of the effect this will have on our society. Many parents will be unburdened with caring for the full needs of them 24 hours a day. Inappropriate institutionalization will be avoided. Handicapped children will profit from education and training at a very early age, maximizing the potential for gaining high levels of independence. This will most probably result in substantial savings of government funds, though this should not be a factor in providing educational programs.

Best of all, however, is the personal fulfillment felt by the child. For many of these children, the mastering of the simplest of tasks is very difficult, requiring weeks, months and even years of education and training. This bill will certainly provide the impetus for meaningful personal progress for these children.

It is not my intention to analyze H.R. 70 in detail. This task I leave to the members of this Committee, education professionals, and national consumer representatives such as the National Association for Retarded Citizens. As a parent of a severely mentally retarded child, I do believe it is my responsibility to urge you to move forward with this legislation as soon as possible. The future of millions of handicapped children is in your hands.

I convey to you my best wishes for all the success necessary to bring about legislative change on behalf of handicapped children. I assure you that there are millions of parents in this country who pray that you succeed.

Mr. BRADENAS. Thank you very much, Mr. Teitelman. That was a most helpful statement.

We will now hear from Mrs. Boerum.

Mrs. BOBET M. I am Marilyn Boerum, the mother of an autistic child and a member of the National Society of Autistic Children.

I would like to address myself to personal problems and frustrations in finding appropriate schooling for my son. I will try to be as brief as possible.

Probably to preface my remarks, I should say that the autistic child comes under the category of emotionally disturbed. Their behavior is such that it is quite difficult to find adequate care for him. Many schools are frightened off by this type of behavior. There are very few programs available for autistic children.

My son attended a nursery school for retarded children for 3 years. At age 6 he was refused by the public school system.

We were advised to enroll him in a private school. He was there for a year, and when the emotional problems surfaced, we were advised to find another placement. The main frustration there was that they were unable to recommend anything for us, as parents. We were frightfully much on our own to seek out placement. We inquired at various agencies and no one could help us in that pursuit.

The next 2 years, he was without any type of program and had to be hospitalized 3 times because of self-destructive behavior. He was at Johns Hopkins, where they referred us to John F. Kennedy Hospital in Baltimore, where he remained for 5 months. This 5-month period amounted to a bill of \$9,000. With their help at the Kennedy Institute, working with a very fine school in Pennsylvania, the school agreed to try him there in their program. This lasted for about 3 years and went quite well in spite of a lot of severe problems. But they did work as well as they could.

By this time, he was age 12, and in this particular school when a child reached age 12, the program changes and they go into a level where they do not get as much individualized supervision. Therefore, they felt he needed more supervision and, once again, we were asked to find placement for him. They felt his program there would not meet his needs.

Once again, the institution could not recommend any place for us. So, as parents, what do you do? You are on your own pretty much.

We have very few resources we can turn to for guidance in these matters. No one we contacted seemed to know of schools that would take these autistic children. There again, the disruptive and destructive behavior was a factor.

Then we heard of a program, Closer Look, sponsored by the HEW. They could provide us with a list of schools. We gleaned the list for what we considered perhaps appropriate placement and wrote to about 50 different schools on the east coast. We traveled from school to school inquiring, and, after a 3-month period, we enrolled our child in a small school in New Jersey. They felt they could handle the situation and would have a program for him. However, it turned out they did not and at the end of 5 weeks we were back where we had started from.

At this time, we had the child back home with us, which made school shopping a little more difficult. I had to quit my job and for the next 6 months he was home with no program at all. What I could provide him at home was not sufficient and regression set in.

We contacted all local agencies to see if there was some respite program where they could keep him for a day while we could go look for a school. The facilities were full or did not want to be bothered.

Last May, we were very fortunate in finding a school in Delaware which, strangely enough, caters to the autistic children. They have a large staff of excellent skilled personnel, skilled in working with this particular handicap. So, for the first time in his 14 years, my son's behavior is under good control. He is able to learn now, which is something that no one thought he would be able to do before. He has mastered the alphabet, he is learning to write and he is even acquiring a little speech, which he has never had before.

However, this school, although it finally seems to be appropriate to his needs, is extremely expensive. The tuition is \$11,000 a year. We are fortunate enough in the State of Maryland to be one family that re-

ceives excess funding. The problem there is that we live in uncertainty from year to year. Every year, each case is reevaluated. Sometimes there are threats of cutting back the funding, perhaps dropping the funding, or what have you. Therefore, we do not know from year to year how long we will be eligible.

Also, there is often a lapse of time between the time the funding comes through and the tuition becomes due. It is not uncommon to call upon your own resources as best you can for large amounts of money. For example, we had a 4-month lapse last year. We had to scrape up \$6,000 to meet that gap.

I have found in many institutions I have visited, I have found many highly disturbed children who, after appropriate therapy, are able to go back into public school classes if these classes are available. But most importantly, if they are staffed by the right kind of teacher, the highly skilled teachers.

I think that about covers my personal experiences. Thank you very much.

Mr. BRADENAS. Thank you, Mrs. Boerum.

Mrs. Lee?

Mrs. LEE. I am pleased to be here and be able to speak in behalf of many handicapped children, particularly our own son, Christopher. I think you have pictures up there which may be better than words.

I am a member of the National UCPA Governmental Activities Committee and I also serve as chairman of the Council of Voluntary Organizations for the Handicapped in Indiana.

We are parents of a severely handicapped young man. Chris is now 20 years old. He is in a wheelchair, totally dependent for all his physical needs upon someone. But he does have a very fine mind and this has really been a challenge throughout his entire educational career.

There have been programs developing but primarily for the retarded. So as we try to find something for a severely handicapped young man with a good mind, it just simply did not exist anyway. We did follow through and wound up with placing Chris in a cripple children's school. The costs are not nearly as high as those for the autistic children but Indiana has not been able to supply 1 cent. So it has averaged \$3,000 a year and Chris has been there for 10 years. So when you begin to think about taking \$3,000 of anyone's income, right off the top, you begin to see the impact.

That is just the beginning because, along with that, you have many, many medical costs. You cannot really separate one from the other.

When Chris entered the private school, this kind of launched me into working on a career to see what we could do to improve things in Indiana. A number of things have happened in Indiana and I feel very good about them. But, honestly, in looking back and reviewing, as I prepared my statement for this meeting, I began to realize we had a long, long way to go.

Let me give one or two examples. Back in 1969, when the mandate for special education was coming into the Indiana General Assembly, we had worked very hard in the coalition group and finally the mandate did go through in 1969, it gave 4 years to the school corporations to get ready, make their plans, make surveys and indicate how many children would need services. Not a single dollar was appropriated.

So the schools were on a limb. The funding level was \$3.2 million. It would never do the job.

As the surveys came back and they made their plans to form joint school programs and put the youngsters in these programs, the estimated costs for the 133 youngsters that came into focus was \$46.8 million. A campaign was waged in order to increase the funding. We came through in that General Assembly with \$27.5 million. This was not nearly, nearly enough to do the job. Even then, it presented a 200 percent increase over what we had had. So we could not really argue, yet we knew it was not enough to do the job.

Schools have their programing, they have done it on faith that they will receive proper reimbursement. We have had to revise the number. Instead of the original figure, our Superintendent of Public Instruction decided it would be \$95,000, just arbitrarily. He took the amounts down from approximately \$100,000. Biannually, we are speaking of, because Indiana is still on a biannual appropriation basis.

We find we are going to have to sacrifice certain children. We do not know exactly how it is going to turn out, but we know there are very definitely those who will fall along the wayside and they are the autistic children and the Chrises, severely physically handicapped, non-retarded.

On the plus side of what is happening in Indiana, we find that 4 years of planning has paid off. We have found that schools have made plans and are going about it in a proper way. We have inservice training of teachers, a continual service is developing.

Representative Chisholm made reference to this, of what should be the approach. The chart I included in my statement indicates there is no ultimate one way or another. The majority of the children can remain in the classroom but then you have services that go all the way up to a special residential school. You will have some children who will have to have special classroom placement and in Brown County, Indiana, the children are enrolled in a regular classroom but they come to a resource center for the academic work. The youngster is a part of the home room. He takes part in the recreational services, he is there at the lunch hour.

We have found this taking place where it was necessary to keep some of these students in the learning research centers and they were only in home room for recreation and this sort of thing. Now they find as they achieve the ability to handle math and reading, then they can remain in the regular classroom for that aspect of training and only come for two subjects. So this is again a tremendous gain for those youngsters. We hope gradually in the elementary ages starting there, by the time they reach the higher grades they will be able, some of them, to make it in regular classrooms.

In our Indiana area, there is now developing the system where the profoundly severely handicapped and retarded children are being bused in. They have over 450 youngsters in that Indiana area. While there are many, many problems, you cannot help but have problems, but there are some of the most exciting things we have seen happening in a long time. There are things left undone because we have found the funding level is not where it should be. We find we should be developing and similarly services provided by paraprofessionals. Paraprofessionals are not being used anywhere yet because of the training



required. But I see this as an opening area where we can begin to use the ancillary services of OT and PT for that. It has been held that every child, in considering his program, must be evaluated by a case conference committee. It sounds like we are really there in Indiana, but I am afraid there are some problems, drawbacks.

What will happen now, as we approach this next general assembly, where we are up for biannual funding? We are way far behind for moneys to carry out the programs. We are going to need some funding. I can see this bill providing the necessary supplementary help, not in any way being detrimental to what is being done at home but rather helping it to happen. I think this is one of the real assets of some of the things you are proposing in H.R. 70.

Again, as I said, I look at this thing and said, "Where have we gone?" Chris was hospitalized, as I indicated in my statement, and in the pictures, for some 9 months at just a tremendous cost of \$10,000. He came home still in a cast for some 3 years. This is 10 years later. I contacted our local school system. Chris was in high school. He needed some services while he was home. I asked if I could bring him in. They said, "All we have is a home-bound teacher." That is what we started out with, 10 years ago. So you see, there is a lot yet to be done in Indiana and in States throughout the United States.

Thank you.

[The prepared statement of Mrs. Lee follows:]

#### STATEMENT OF MURIEL LEE, NASHVILLE, IND.

I am pleased to have the opportunity of appearing before you to speak on behalf of many handicapped children and to share with you some of the problems and struggles encountered by our family in securing an education for our son Christopher.

I am Mrs. Ralph Lee, Nashville, Indiana, and the parent of a severely disabled young man. I am a member of the National UCPA Governmental Activities committee and chairman, since 1969, of our Indiana UCP Legislative committee. I also serve as chairman of a strong coalition group known as COVOH, the Council of Voluntary Organizations for the Handicapped in Indiana. This past fall, I was reappointed by the Superintendent, Indiana Department of Public Instruction, to the State Advisory Council for the Education of Handicapped Children.

All of these involvements have stemmed from the fact that a free public school education was not available to our son nor to many other handicapped youngsters in Indiana.

Christopher is now 20 years old. He is diagnosed as severe cerebral palsy (athetoid). He is in a wheelchair and totally dependent for all of his physical needs. At this point in time, he cannot so much as control the lifting of his arm, let alone perform the complicated finger movements required for eating or holding a pencil to write. But Chris has speech—not the free flowing speech with which we are conversing today—but speech that does allow him to communicate his needs and more importantly, his thoughts... for Chris has a good mind and a lively imagination. This ability to express ideas allowed him to turn a potential devastating medical experience into an imaginative puppet show in which he relates all that has happened to him via a camel who wants to dump her hump! News coverage of the event is seen in Appendix I.

#### DESPITE HANDICAP, SOON TO GRADUATE BUT SOCIALLY BEHIND HIS PEERS

We are proud that with his degree of handicap, Chris will be graduating from high school in another year. He attends the Crippled Children's School in Jamestown, North Dakota—one thousand miles from home. His school year spans ten months rather than the traditional nine due to the time required for speech, occupational and physical therapy. Upon graduation, Chris hopes to pursue his goal of becoming a writer. Chris' sister, Sandra, is completing her clinical affiliations to become a registered occupational therapist.

It appears that we are doing fine. Each crisis has been met, the future while gnawingly unclear, is at least within reach. But—not quite so—not so for Chris



nor for nearly 11% of the school age population which falls under the label of the "handicapped."

Not so for Chris because, while academically secure, he is socially out-of-touch with the real world, and this could be a grievous loss to a would-be writer. Chris alludes to this himself in his dictated Letter to the Editor of the Indianapolis NEWS. It was written last summer in response to opposition expressed against the proposed new rules and regulations for special education in Indiana. Chris' complete letter is in Appendix II, but the first paragraph points to Chris' own recognition of what he has missed by being away from home:

"I am one of those 133,000 youngsters in Indiana who need a special education. I am writing this letter to thank the State of Indiana and its splendid school system for its wonderful education program. It's so wonderful that I have to go a thousand miles from home to a boarding school. It's so wonderful that I have to spend ten months out of the year away from my family. It's so wonderful that I have to miss some of those exciting things in our family like building a new house and making friends at home. When I come home for two months in the summer, I do not know anyone my own age \* \* \*"

Chris suffers from the exclusion process inherent whenever we separate the handicapped from the rest of the world. Can there ever be justification for this kind of separation from the mainstream of school life?

#### EVERY CHILD HAS A RIGHT TO A FREE PUBLIC SCHOOL EDUCATION

It is my firm belief that every child has the right to a free public school education—regardless of the severity of the handicap. This concept is not simply that of overly optimistic parents. Professionals agree that developmental sequences are the same for all children—handicapped or not. And so too, with regard to a youngster's observations about this world or the feeling he expresses—indeed, a child is a child.

This basic right of a child to a free public school education has now been sustained in our federal courts. You'll be hearing more about the Pennsylvania case and the Mills vs the Board of Education of the District of Columbia. I need not dwell upon them except to point out that the law does not necessarily change the attitudes of people so that they fully accept the concept that every child is a child with a right to be educated. However, if all of us can accept this premise, then the question is not "if" but "how" do we finance programs for the handicapped. The bill, H.R. 70, would have the federal government finance the excess costs for educational programs within the states. It will be costly. Let us look at two alternatives—private family resources and state resources.

#### BEYOND FAMILY RESOURCES

While many more states have assumed greater responsibility for the education of handicapped youngsters, it still remains, that unless parents of severely handicapped youngsters resign themselves to the placement of their child in an institution, these parents will have to bear the costs of privately financing the education of their child.

I contend, that in today's economy, the costs of educating a handicapped child are beyond the resources of a family of average and even above average income. I base this upon the factual experiences of our own family. It should be said from the onset that "educational" costs are only one of many costs to a family. At times the medical expenses far exceed the educational costs, yet the individual family cannot separate the two. The importance of this fact became painfully clear to our family.

My husband's income has been substantially above the average. Consequently we did not seek financial aid through crippled children's services for the intensive three day-a-week physical and occupational therapy sessions in the pre-school years for Chris. Back then, the sessions were \$4.00 per half-hour—today they average \$12.00 per half-hour session. Nor did we seek aid for the cost of orthopedic equipment such as standing tables, special chairs, braces and other equipment. Nor for the stereotactic surgery at IU Medical Center in 1963 and the Rizzotomy procedure in 1969. These can be exceedingly prohibitive costs for many young families.

#### NO CLASS IN PUBLIC SCHOOL—HOMESCHOOL INSTRUCTION

When Chris reached school age, I realized for the first time the tremendous struggle that lay ahead. One doctor had already told us, "the best thing you can do for your son is to place him in an institution . . ." And now, in talking with the school principal, we were told, "of course we want to do everything possible,

but we simply have no class for him." A familiar statement known by any parent of a handicapped child. It may take different forms—"we haven't a teacher" . . . or . . . "we just don't have the money—but whatever the form, it means the same thing. In our case, upon parental insistence, it was decided that Chris would qualify for a "homebound" instructor. One hour a day, three days a week. This was Chris' education for the next two years, whereupon the thought of ten more years of homebound teaching became intolerable. There was no social contact . . . there was so little offered.

#### NO TRANSPORTATION

Again, with great parental insistence, Chris received a tuition transfer to Roberts School for the physically handicapped in Indianapolis. The only public school of its kind in Indiana. It is to Chris' credit and that of his homebound teacher that, upon transfer, Chris entered the third grade. One slight problem. Our local school could not provide transportation. Thus began two years of traveling 80 miles round trip daily—rain or shine, sleet or hail—at *family expense*, to give Chris the educational opportunity he deserved. As the constant pressure of meeting deadlines and of lifting in and out increased, the situation reached a point of crisis.

#### COSTS OF PRIVATE SCHOOLING

In the Spring of 1964 we visited the Crippled Children's School in North Dakota—a school highly recommended by the Cerebral Palsy Clinic in Indianapolis where Chris still receives therapy. The school was fully accredited and served the non-retarded, severe physically handicapped child. Since the school received support from Church and private donations, the fees seemed within our family capability. It meant drastically curtailing our activities but we could live with it. Chris has been in attendance there for ten years. The yearly average cost has been \$3,000.00 per year including the transportation fares to and from school in the Fall, at Christmas and in June. But these costs are rising sharply. Tuition has doubled, and air fares for Chris and the adult who must accompany him have more than doubled. This past Christmas the cost to fly him home was \$451.00.

There is no way that the average family can absorb such costs year after year.

#### NO PROGRESS IN TEN YEARS

And yet, there is still nothing offered at home for Chris. Ironically, after his long hospitalization, when Chris was home for a semester, our local high school could offer only a homebound teacher . . . the same service Chris was given ten years ago.

#### CATASTROPHIC EXPENSES

On April 26, 1972, our family met its financial Waterloo. Chris entered Fairview Hospital, Minneapolis, Minnesota for what was to be a nine month hospitalization, 600 miles from home. Adolescence, for Chris, had brought a severe curvature of the spine, known as scoliosis. It required a fusion of the spinal column if he were to remain sitting upright and free from pain. Following two surgical procedures, he was in a full body cast from head to ankle for nine months, plus three additional months in a lesser cast at home.

The costs of this, including three months living arrangements for myself in Minneapolis, and trips back and forth by the family, totaled over \$40,000.00. A figure, I dare say, few in this room could absorb in a year's time. Thus, my husband and I were forced to seek outside help with its demoralizing requirement that one prove one's incapability of handling the costs. With our income base, we were turned down by most agencies. But Chris was now 18 years old, and because emphasis was being placed by Congress on services to the severely disabled and because COVONIL, for which I serve as Chairman, had battled for increased state matching funds, our Indiana Vocational Rehabilitation Services accepted Chris as a client. This, together with our insurance, was the only thing that kept our family from complete financial disaster. Even so, it became necessary for our daughter to leave her university dormitory and seek employment to maintain her tuition costs.

It is not my intention nor desire to belabor our family's financial plight at that time. We have come through, intact. My purpose in relating our story, is to show, beyond any doubt, that even for a family with above average income, the increasing costs of education and medical services, are beyond the private resources of the family.

## PROBLEMS IN STATE RESOURCES FOR EDUCATING THE HANDICAPPED

If we can perhaps agree, then, that individual family resources are inadequate, we are ready to look at our second alternative to the proposal for federal support of special education. That is, to place the responsibility solely upon state resources.

From my experiences at the Indiana state legislature, and my knowledge of Chris' experiences with public school education, I must conclude that total dependence upon state resources for special education of the handicapped will mean a lack of services for years to come. While Indiana has made great strides in its services to the handicapped, it is far from accepting its full fiscal responsibility. It was because of the many gaps in services for the handicapped that COVOH came into existence.

## COORDINATION OF EFFORTS BY VOLUNTARY ORGANIZATIONS TO SERVE THE HANDICAPPED

Approximately fifteen groups comprised the original COVOH coalition. It included organizations such as United Cerebral Palsy, Indiana Association for Retarded Children, Mental Health Assoc. Indiana, Congress of Parents and Teachers, Association for Multiple Handicapped Deaf and other groups having direct concern for the handicapped. We banded together to secure passage of the special education mandate.

The mandate was passed in 1969—but only as a philosophical premise. There was no money appropriated.

Local school corporations were given four years to make plans for serving the handicapped within their local corporation or in a joint school service program. The State Advisory Council, stipulated in the law, wrote the Guidelines for schools to follow, and prepared the needed rules and regulations for implementing the Acts of 1969. The Guidelines stressed the need for a "continuum of services" rather than only special class placement. The chart in Appendix III illustrates the different kinds of programs within a school system.

## INADEQUATE STATE FUNDS FOR SPECIAL EDUCATION MANDATE

The battle for adequate funding became all important in the following sessions of the Indiana General Assembly. COVOH membership grew to its present membership of nearly fifty organizations as seen in Appendix IV.

Unfortunately funds for full implementation of the mandatory special education Act were NOT secured. The amount needed for State reimbursement to local schools in order to serve 133,000 youngsters had been set at \$46.8 million. The final biennium appropriation was \$27.5 million. It was not nearly enough—but it did represent a 200% increase over the past biennium.

Who was sacrificed? The full story is not yet apparent for this is our first year of mandatory special education in Indiana, but it would appear that the autistic, the learning disabled, the emotionally disturbed and the severe physically handicapped, non-retarded—the 'Chris' of Indiana—are the losers.

It has taken 10 years of constant effort to reach the point where we are now in Indiana. In terms of normal child development, that represents an entire school life-time . . . from age 7 to 17. And yet, Indiana is ahead of some states!

## CONCLUSIONS

In summary it seems to revert back to where the family is financially responsible for educating their handicapped child will doom the 'Chris' of this country to an institutional life. And to place the responsibility solely upon the legislative bodies of each state, will likewise doom many youngsters from ever receiving an education with their school life-span.

But if we accept fully the basic premise that every child does have the right to a free public school education, then some type of stimulus at the Federal level must be utilized.

Whatever its final form, however, there must be safeguards for the development of *quality* programs. This seems to be implied in the compliance requirements of the bill now before you.

Our approach in COVOH is simply expressed—"Working together, we serve the handicapped." It would seem that this could apply equally to State and Federal Government—working together to provide the educational opportunity that handicapped youngsters so desperately need.

[From the Minneapolis Tribune, July 4, 1972]

(By Robert T. Smith)

So after her operation, Kahran the Camel returned to Egypt where once again she was free to run and play like all the other camels . . .

The youngsters, some in braces, some in body casts, watched the puppet show on the second floor of Fairview Hospital. It was of particular interest to them.

Among those watching was Christopher Lee, 18, Nashville, Ind., the author of the now entitled "The Camel Who Wanted to Dump Her Hump." Most of the youngsters there have scoliosis, a disease of the spine that can cause terrible crippling if not treated. It attacks mainly adolescents and particularly girls.

Lee not only has scoliosis, but was born with cerebral palsy. He has never had use of his body. For him, the scoliosis is just an added burden. But Lee, who wants to be a writer, decided to write the puppet play to amuse the other scoliosis victims and, perhaps, to help them with the worries of the required surgery and the long months in a cast.

The puppet theater was constructed by Lee's father, Ralph, a sales representative, and was produced by his mother, Muriel. Some of the youngsters with scoliosis provided the voices for the puppet characters.

In his play, Lee portrays a little camel who has an extra hump—scoliosis. She comes to America for her operations so that she can be normal again. She finds a friend in the beautiful Princess Pasha, who also has the disease. The story traces each step in the treatment and surgery of the camel and the princess, the same steps that most of those in the audience have gone through or are about to.

At one point, Kahran the Camel asks a doctor about Pasha: "When will she be going home? Does she have a cast like mine?"

The doctor: "No, hers is different. You'll wear your cast for another six months and stay right here in the hospital. Pasha will be able to go home in another week with a walking cast. She'll wear that for six months and then return for a light brace. Each one is different, you know."

As is true in most cases that are treated, Kahran and the princess had successful operations. They both were eventually free to run and play again.

But not Lee. After he is through with scoliosis, he'll still have cerebral palsy.

## APPENDIX II

[From the Indianapolis News, July 10, 1973]

### RULE S-1 OPPONENTS "DO NOT UNDERSTAND"

*To the Editor of The News:*

I am one of those 133,000 youngsters in Indiana who need a special education. I am writing this letter to thank the State of Indiana and its splendid school system for its wonderful educational program. It's so wonderful that I have to go a thousand miles from home to a boarding school. It's so wonderful that I have to spend ten months out of the year away from my family. It's so wonderful that I have to miss some of those exciting things in our family like building a new house and making friends at home. When I come home for two months in the summer, I do not know anyone my own age.

It's so wonderful that Indiana lags far behind Illinois, Michigan, Wisconsin, Minneapolis, North Dakota, etc., in providing a public school education for the handicapped.

I, too, attended the hearing on Rule S-1--wheelchair and all--and the testimony given by those approving the rule was good. The remarks made by those opposing the rule were by people who do not understand the needs of the handicapped. They said they want the handicapped to be educated. Yet, when we, the handicapped, try to get the education we need to become useful citizens, we are turned away.

I am lucky to have parents who are able to give me the quality education that I need. What about the rest of the handicapped young people? Without the new Rule S-1, will they be so fortunate?

NASHVILLE.

CHRISTOPHER LEE.

## APPENDIX III

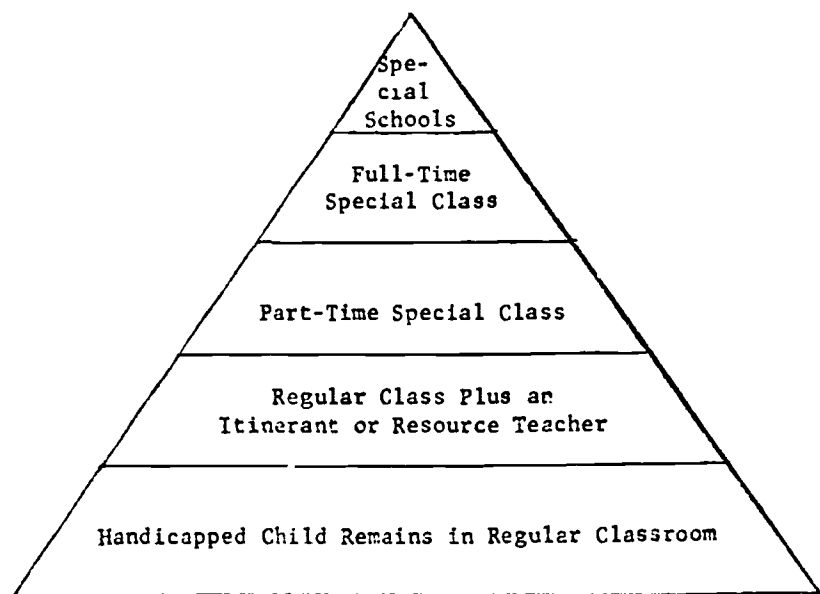
COVOH COMMENTS ON MANDATORY SPECIAL EDUCATION ACTS 1969, CHAPTER 396,  
STATE OF INDIANA--INTRODUCTION

Various questions have been asked regarding the Mandatory Special Education Act of 1969 and the revised (proposed new) RULE 8-1. The following comments, references and comparisons have been prepared for your information by COVOH. We urge you to examine them carefully and to feel free to contact us. Our only concern is for the education and rehabilitation of Indiana's handicapped children and adults.

This document deals with frequently asked questions and their answers; a companion document makes a comparison of the definitions of handicapping conditions as written in the Present (Old) and the Proposed (New) RULE 8-1.

*Question.* What is special education?

*Answer.* The principle of special education is the same as that for educating ALL children. It is based on the philosophical premise of democracy that every person is valuable in his own right and should be afforded equal opportunities to develop to his full potential.



A CONTINUUM OF SERVICES FOR HANDICAPPED CHILDREN  
WITHIN THE PUBLIC SCHOOLS

COUNCIL OF VOLUNTARY ORGANIZATIONS FOR THE HANDICAPPED IN INDIANA,  
INDIANAPOLIS, INDIANA

It is increasingly apparent that no single organization can successfully meet the varied needs of handicapped children and adults. It requires a coordination of effort by organizations serving the handicapped and the assistance of concerned individuals and groups in business, labor and education.

The Council of Voluntary Organizations for the Handicapped in Indiana (COVOH) has become this coordinating Council. Its purposes are 3-fold:

- (a) To coordinate efforts of voluntary organizations and public agencies in meeting the needs of the handicapped.
- (b) To develop a better understanding of the handicapped by the public;
- (c) To further the implementation of statutes and regulations in behalf of the handicapped.

## PRESENT MEMBERSHIP INCLUDES: 1974

Cerebral Palsy Clinic Parents Association.  
 Coordinating Council for Handicapped.  
 Council for Retarded of St. Joseph County.  
 Crossroads Rehabilitation Center.  
 Daviess Company Association for Retarded Citizens.  
 Department of Special Education, Ball State University.  
 Goodwill Industries of St. Joseph County.  
 Indiana Association for Children Learning Disabilities  
 Indiana Association for Hearing Impaired.  
 Indiana Association for Retarded Citizens.  
 Indiana Association for Elementary School Principals.  
 Indiana Association for Public School Superintendents.  
 Indiana Association for Deaf.  
 Indiana Chapter for American Physical Therapy Association.  
 Indiana Chapter, International Association for Rehabilitation Facilities.  
 Indiana Congress of Parents and Teachers.  
 Indiana Council of Administrators Special Education.  
 Indiana Federation of Teachers.  
 Indiana Federal Council for Exceptional Children.  
 Indiana Lung Association.  
 Indiana Occupational Therapy Association.  
 Indiana Rehabilitation Association.  
 Indiana School Boards Association  
 Indiana Speech and Hearing Association.  
 Indiana State AFL-CIO.  
 Indiana State Nurses Association.  
 Indiana University Developmental Training Center.  
 Indianapolis Speech & Hearing Center.  
 Indianapolis Goodwill Industries.  
 Indy 500 Chapter, National Association Physical Handicapped.  
 Johnson County Association Parents & Friends Retarded.  
 L. W. Freeman Chapter, National Paraplegia Foundation.  
 Mental Health Association, Indiana.  
 Marion County Association for Retarded Children.  
 Northwest Indiana Special Education PTA.  
 Northwest Indiana Epilepsy Association.  
 Opportunity Center, Columbus.  
 Organization for Visually Impaired Children.  
 Parents & Friends of Handicapped Children.  
 PTA, Indiana School for the Blind.  
 PTCO, Indiana School for the Deaf.  
 Purdue University, Special Education.  
 South Bend Chapter, Indiana Association Children LD.  
 Tri-State Association, Children LD.  
 Tri-State Epilepsy Association.  
 U.C.P. Central Indiana.  
 U.C.P. Indiana.  
 Individual Members.

Mr. BRADENAS. Thank you all for your statements.

Why, Mrs. LEE, do you think there is the reluctance in the State of Indiana to provide moneys for handicapped children?

Mrs. LEE. There is no easy answer to that. Certainly one is a need for a change in attitude towards the handicapped. When you say special education, it means one thing, a class for the retarded. Now, you see that kind of an attitude says what we are talking about. This is reflected in the teachers. This is where we feel we have a great need.

Mr. BRADENAS. You will recall from the testimony this morning from the State Education Department of Pennsylvania a witness remarked that a substantial amount of the revenue sharing money in that State had been earmarked for the education of handicapped children. In Indiana, do you know how much money is allocated to handicapped children?

Mrs. LEE. At this time it has not even been considered. There are many, many areas in Indiana where the school system itself is in distress and I am sure the moneys have gone in that direction.

Mr. BRADEMAY. Is this not a subject, namely the subject of the use of revenue sharing moneys at the local State level, which would be an appropriate one for parents and others concerned with the needs of handicapped children?

Mrs. LEE. Yes. We need understanding of the processes involved and I think we are going to have to be educated on how to seek these funds, on how to go about it.

Mr. BRADEMAY. One other question I would ask you, Mrs. Lee. It touches upon the enactment, I believe you said in 1969 Indiana statutes mandated special education for all handicapped children who needed it. I recall, however, that you said the passage of that law did not resolve the problem because of the lack of financial commitment to make good on that mandate. This is the statement that I think our other witnesses have also pointed to with respect to their States.

I am wondering what your judgment is with respect to a law suit? I have been told, I do not know if this is accurate, that enactment in 1969 in Indiana mandated the right of education but if the State does not provide the financial resources to make good on the mandate, is that likely, in your judgment, to mean a law suit in our State?

Mrs. LEE. I am a little pressed to answer that. Let me correct one feeling that was expressed here. The mandate was passed in 1969, on a philosophical premise. There was no funding. However, in doing so, there were many of us carried by the thought. But the law stated that the school corporation had 4 years to gear up. The mandate was passed but not effective until 1973. So various groups considered the possibility of a law suit. Everyone agreed that the timing would not be right until we had seen what actually would happen in 1973 and until the gearing up happens.

What has happened, interestingly enough, as far as the retarded groups are concerned, they are being served right now in the very most severe cases. Whereas those not being served are not organized. There are not that many of them and whether or not they can undertake a law suit, I do not know. It may be required.

There was a compromise calling the neurologically impaired disabled and it requires a medical prognosis on it, but that is very damaging to these very soft symptom types of disabilities. We may have to wind up in a law suit to get that clarified.

Mr. BRADEMAY. Of course you know the governor of our State is a physician. I hope he will not be hesitant in expressing his views.

Mrs. LEE. He has been a tremendous asset to us and we presented the governor with a picture made by a 16-year-old cerebral palsy youngster in school for the first time this year. She had to lay on the floor and she made this drawing of just her feelings. We turned to the girl and said what does this depict? She said, "A good day." So when we presented it to the governor, we said, "We hope you have a good day," because he has been a tremendous help to us.

Mr. BRADEMAY. Thank you.

Mr. Teitelman, let me put the same question to you and Mrs. Boerum. To what extent have the revenue moneys in Maryland and Connecticut been used?



Mr. TRITTMAN. I don't know, and I might respond by saying what I am faced with is a determination of what are the needs. I believe it is the responsibility of the administration of the State and the responsibility of the legislature and also the responsibility of the Congress to provide the funds, whatever the source, because the administration of the funds is something that is not within our frame of reference.

We do not really know what all the other needs of the State happen to be. So I am not going to, at this point, question the judgment as to which moneys are used for this project. I think the important thing is that we recognize the needs and that the moneys be provided.

Mr. BRADEMAS. I hope you won't mind a little gentle disagreement with that point of view. You know, if you depend upon the divinity of the perceptions of elected officials to come up with some solemn judgment on spending of public funds, then I might suggest you are not going to always be happy with the results.

To put it in plain words, it is often the fellow with the squeaking wheel that gets the grease.

The reason I voted against revenue sharing is that I did not have the feeling that the elected officials would be sure to take the revenue sharing money and put it in programs to help the vulnerable groups such as retarded children. That is one of the reasons I have been very reluctant to give up on categorical programs. I am sure you would have been in agreement with one of the witnesses who appeared before this subcommittee to testify in support of the continuation of the Handicapped Act, to the effect they did not want that program within the administration revenue sharing proposal. They were fearful the needs of handicapped children would get lost, as it were.

So all I am saying is don't put so much trust in the good intentions of politicians. They are human beings, too, and they are going to listen to those groups which are articulate and make their lives miserable. I would suggest if I were in your situation, I would make a lot of noise in the offices of the governor or the mayor, anybody who has any un earmarked funds. Let him know that you feel the handicapped children have some right to have their needs considered also. I doubt that you really quarrel with what I am saying. I am just trying to give you a little friendly advice on how to go about lobbying. I hope you take it in that spirit.

Mr. TRITTMAN. I take it in the spirit in which it is made. I can only assure you, we speak loudly and clearly back home and are really concerned. I can assure you, the Governor's office and the Office of Mental Retardation in Connecticut know us very well. I agree with you that we have to make a lot of noise constantly and always. I accept your observation that the intuitive wisdom of the administration is not always to be depended upon. But I would repeat that what we are concerned with here really is the programming. We have to, as parents, press as hard as we can to see that the proper funding is available for that programming. That is all I mean to suggest.

Mr. BRADEMAS. I appreciate that.

Mrs. Boerum, do you have any comment on that general revenue question or any other matter we have discussed?

Mrs. BOERUM. I am not knowledgeable with that as to the State of Maryland. Our group does make considerable noise in Annapolis con-



stantly. So therefore I am sure there would be others more knowledgeable about that than I.

Mr. BRADENAS. I don't want to linger longer on this, but I would think it would be helpful if people who are as obviously as deeply concerned as you are, go ahead and make inquiry, to make sure what is going on. Somebody in the State of Pennsylvania has obviously been doing some work in this respect.

Mr. TEITELMAN, the question you raised in your testimony struck me, when you were talking about how the number of school systems are providing school education for educatable children but most do not provide facilities for the severely and profoundly retarded.

I wonder if you and your colleagues would like to make any further comments in elaborating on that point, particularly with a view toward the question of State constitutional prohibitions against the use of moneys for children other than those educatable? Have you found such constitutional or statutory prohibitions have been a problem?

Is my question clear?

Mr. TEITELMAN. I believe I understand your question. Mr. Chairman, I guess what I should do is simply make the distinction between the public school education I was referring to in terms of the locally administrative process, as opposed to the programs that are provided by the State itself in another system.

What we wish to have happen is that all the programming be at the local level. Now, the law in Connecticut is a good law but the implementation is something else. The law says that every child shall have an education. However, the regulations that come out specify certain exclusions. So we have a mandate and we do not have a mandate. I guess we call it a mandatory law, but the Department of Education sets parameters of competence around those children that may be within the public school system. We are constantly pressing for the development of the municipally operated public school system to include all children, handicapped.

In my oral testimony, I was referring to exclusions. I meant to include those exclusions also which are set forth by regulation of the Department of Education.

Mr. BRADENAS. I just would have a final question. Mrs. Boerum and the other colleagues may wish also to comment on that. This has to do with the question which has already arisen, namely, the attitudes of the public generally toward handicapped children and toward the education of handicapped children. We have been discussing here how to generate more support and my colleagues and I, if we move ahead with this legislation, will be faced with trying to obtain adequate support from Congress for this purpose.

Do you find that there is a change of attitude going on with respect to the wider public who do not have handicapped children in their families?

Mrs. BOERUM. From my personal experience, the better the public is educated to the possibility of success, the more they tend to be in favor of education for them. I think before the general feeling was what is the use spending all that money for these children when they probably will not attain much success. But I think the evidence we have been pushing recently has helped change that attitude considerably.

Mr. LEE. In Indiana, if I may respond to that, our next Governor's conference team will be "Changing Attitudes," and it has a double meaning. What is actually being accomplished in some of the things to be accomplished. Leading up to this has been a tremendous testing campaign in which we have developed films, spot announcements, and it is changing, it is happening. This is a good sign that it can take place. I think some of the success stories are now beginning to appear. That will do more than anything else to change attitudes.

If I may make one more comment, Indiana's mandate is truly a mandate and it is zero reject. It is going to take a while for it to actually be accomplished, but I think the mandate and rules and regulations developed are very valid.

Mr. BRADMAS. Mr. Teitelman?

Mr. TEITELMAN. I would have to reiterate the same observation and that is the public generally is accepting the handicapped person as a part of the community. I have found more and more there is hardly any resistance at all from the public. But I would like to delineate between the public, consisting of the citizens we meet every day on the streets, that we work with and live with, from the public represented by local administrations, municipal administrations, or even the State administrations. There also I find a change in attitudes. However, the thing that distresses many of us is the lack of knowledge on the part of particularly local boards of education of what the laws are, what the regulations are, what the guidelines are. I find that I and a number of us who have reviewed the activities of boards of education as to what it is that they are responsible to administer, we find that often many of these people are captives of the administrations themselves.

I could only describe something is happening now back home which is that a group of parents representing all the different handicaps across the board from physically disabled, mentally retarded, autistic, CP's, are now forming an organization. One of the purposes of this organization will be to establish workshops for every board of education in the State and to inform them and educate them as to what the laws are. We feel that when they themselves have been exposed directly through a perspective outside of the established structures, when they are informed of what the laws and regulations and needs are, we may have some very heartening reactions, positively, in the form of further services.

I would simply end that comment by saying the Commonwealth of Pennsylvania, I should say, is a very good example of a situation where the Commonwealth was in fact forced by a court edict to review its own attitudes toward the delivery of services to the mentally retarded. The marvelous thing of it is that growing out of that edict is the concern for all handicapped. That in and of itself is an educational process and I would hope that the trials of the class action suits that the chairman is alluding to will not be necessary, since the tone of concern has already been established.

Mr. BRADMAS. Thank you very much, Mr. Teitelman. I might just say, as we conclude, as we have been discussing this question of public attitudes toward handicapped persons, some of the members of the subcommittee last summer and fall were in Germany looking at institutions for the handicapped. We found there two factors of interest.

One is that in some ways the Germans are doing a better job than we are in attending to the needs of handicapped children and they—at least it was the general impression we had—they have taken for granted they have an obligation to provide for handicapped children.

The other factor was it had taken them some time to turn the attitudes of the German people around from the Nazi period, during which handicapped children were determined less than human and to be of no use to society because of their afflictions. It is a mark of the civilized society to the extent that society does attend to the needs of these within its population.

Thank you all for appearing here today. We are very grateful to you.

The subcommittee is adjourned.

[Whereupon, at 3:50 p.m., the select subcommittee was adjourned, to reconvene on Monday, March 18, 1974, at 10 a.m.]

## FINANCIAL ASSISTANCE FOR IMPROVED EDUCATIONAL SERVICES FOR HANDICAPPED CHILDREN

MONDAY, MARCH 18, 1974

HOUSE OF REPRESENTATIVES,  
SELECT SUBCOMMITTEE ON EDUCATION  
OF THE COMMITTEE ON EDUCATION AND LABOR,  
*Washington, D.C.*

The select subcommittee met at 9:50 a.m., pursuant to recess, in room 2175, Rayburn House Office Building. Representative John Brademas (chairman) presiding.

Present: Representatives Brademas, Mazzoli, Badillo, Quie, Eshleman, and Hansen.

Staff members present: Jack G. Duncan, counsel, and Martin LaVoor, minority legislative associate.

Mr. BRADEMAS. The Select Subcommittee on Education of the Committee on Education and Labor will come to order for the purpose of further hearings on H.R. 70 and related bills to authorize the Federal Government to provide financial assistance to the States to improve educational services for handicapped children.

The chair will observe this is the third day of hearings on this particular matter and on Friday, March 22, we shall continue these hearings.

The chair should point out also the legislation we are here today considering will, at least in his view prove to be landmark legislation if and when approved by Congress.

For, we are today providing special education for only 40 percent of the handicapped children in the country, including the emotionally disturbed and physically handicapped.

The measure before us today is to assist the States in providing special services to all the handicapped children who require these special services. Yet we are also looking into one of the most complicated fields in the whole educational spectrum.

The chair makes this observation because it is clear, that there are many complex issues involved in this area.

First, there is the question of defining excess costs. We must secondly be concerned with protecting the privacy of handicapped children. Finally, there is the question of how the Federal Government can most effectively encourage States to put more funds into educating these children.

We have a lengthy and distinguished list of witnesses this morning. Therefore, the Chair hopes to the extent possible, the witnesses will summarize their statements and all prepared statements will in their entirety be included in the record of this hearing.

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Our first witness is Hon. J. Stanley Pottinger, Assistant Attorney General, of the Department of Justice, Civil Rights Division. He will speak on the legal and constitutional rights of handicapped children.

Then we shall hear from Mr. Thomas Nobis, who is a professional football player with the Atlanta Falcons. Mr. Nobis will be accompanied by Mr. James Cone, director of the County Parks and Recreation Department of Georgia.

We shall then hear from the distinguished Lieutenant Governor of the State of Maryland, Hon. Blair Lee III, who will be accompanied by Stanley Mopsik, coordinator of services to special education, Maryland State Department of Education.

Then we shall have a panel of State directors on special education and coordinators of programs for the mentally retarded.

We expect to hear from another panel then if there is time, we shall hear from the Deputy Assistant Secretary for the Department of Health, Education, and Welfare, Mr. Cook.

We shall begin our hearings today with Mr. Pottinger.

We are very glad to have you with us, sir. If you wish to present your associate, go right ahead.

**STATEMENT OF J. STANLEY POTTINGER, ASSISTANT ATTORNEY GENERAL, CIVIL RIGHTS DIVISION, DEPARTMENT OF JUSTICE, ACCOMPANIED BY DANIEL F. RINZEL**

Mr. POTTINGER. Thank you, Mr. Chairman. Thank you for the opportunity to appear here this morning. With me is Mr. Daniel F. Rinzel, who has considerable experience in the area about which I am to testify and may also assist me in presenting my testimony this morning.

The Department of Justice is interested in the legal issues pertaining to the rights of handicapped children to an education. Our interest has been particularly concentrated on litigation regarding the rights of the mentally retarded.

As you are probably aware, a good deal of litigation has recently been initiated by private parties in an effort to establish through the courts the right of handicapped children to a free public education. Some of the better known of these cases are *Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania*, 334 F. Supp. 1257 (E.D. Pa. 1971), 343 F. Supp. 279 (E.D. Pa. 1972) and *Mills v. Board of Education of District of Columbia*, 348 F. Supp. 866 (D.C. 1972). Similar right to education cases, in which the plaintiffs are primarily mentally retarded children who allege that they have been denied access to the public schools, are now pending before Federal courts in States such as California, Colorado, Hawaii, Kentucky, North Carolina, and North Dakota. Other similar suits are pending before State courts.

Plaintiffs in these cases have, for the most part, rested their legal theories on claimed violations of the Equal Protection and Due Process Clauses of the 14th amendment. That is, they allege that exclusion of the mentally retarded from a free public education must be justified, if at all, by proof of a compelling State interest in such exclusion, and that before being excluded from public schools or being assigned to

special classes, mentally retarded children are entitled to notice and hearing comporting with the guarantees of the due process clause.

Unfortunately, there are few solid legal precedents in this area. Of the two cases I mentioned earlier, the Pennsylvania case was a consent decree and the *Mills* case was at least a quasi-consent decree, and their value as precedent is thus limited. The compelling interest test which plaintiffs may in such cases advocate is a more stringent standard than that normally applied in equal protection cases. Imposition of this higher standard is sought to be justified on the grounds that education is a fundamental right and that classifications based on an individual's status as mentally retarded are suspect classifications, just as classifications based on race are suspect. The Supreme Court's decision in *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973) has undercut, at least somewhat, the theory that education is a fundamental right. No Federal court has as yet either endorsed or rejected the theory that the State classifications of the mentally retarded are suspect.

The Civil Rights Division of the Department of Justice has participated directly in two right-to-education cases, *Lebanks v. Spears* (C.A. No. 71-2987 (E), E.D. La.), and the second most recently, *North Carolina Association for Retarded Children v. State of South Carolina* (C.A. No. 3050, E.D. N.C.).

The department's statutory authority to participate as party-intervenor in 14th amendment cases is limited under title IX of the Civil Rights Act of 1964—42 United States Code 2000h-2—to cases which involve allegations of discrimination on the basis of race, color, religion, sex, or national origin. Some mental retardation cases have involved allegations of racial discrimination. In *Larry P. v. Riles*, 343 F. Supp. 1306 (N.D. Cal. 1972), for example, the court found racial discrimination in the method of assigning black students to special education classes in the San Francisco School District. There was also an allegation of racial discrimination in *Lebanks v. Spears*, the case I mentioned a moment ago in Louisiana. However, since most of these right-to-education cases have not included allegations of discrimination on account of race, color, religion, sex, or national origin, our participation has usually been at the invitation of the court in the role of an amicus curiae, or friend of the court.

Some background on the *Lebanks* case might be helpful. The plaintiffs in the *Lebanks* case were school-age black children who alleged that they had been excluded from the public schools of Orleans Parish, La., because they had been classified as mentally retarded. Defendants included the Orleans Parish School District, the Louisiana State Board of Education and the Louisiana State Mental Hospital system. The Department of Justice initially became involved in the *Lebanks* case in the course of representing the Secretary of the Department of Health, Education, and Welfare who was named as an added defendant in a cross-complaint filed by the Louisiana State defendants, seeking an order requiring the Federal Government to help pay the additional costs which would be incurred in educating the plaintiffs. The Secretary of HEW was, however, dismissed as defendant, apparently because the theory upon which the State's claim against HEW was based was unrelated to the issues presented by the plaintiffs. The Civil Rights Division then entered the case as amicus curiae in support of the plaintiffs.

The *Lebanks* case was settled by a consent agreement entered April 24, 1973, which recognized the right of all mentally retarded children to a free public program of education and training appropriate to the child's age and mental status. The consent decree also provided for extensive procedural safeguards to insure access of the mentally retarded to public education. The decree recognized the validity of what has become known as the "least restrictive placement" theory.

Thus, the decree provides that the most desirable placement for mentally retarded children is, first, in a regular classroom with appropriate supportive services; second, in a special education class but in the school; third, in a community training facility which allows the child to remain with his family; and, last, in a residential institution.

On February 14, 1974, the United States was designated a plaintiff-intervenor in another right-to-education case, *North Carolina Association for Retarded Children vs. State of North Carolina*. The adequacy of financing of educational programs for the retarded is also an issue in this case.

The private plaintiffs have recently moved to amend their complaint to include an allegation of a violation of section 504 of the Rehabilitation Act of 1973. This section, which became effective December 26, 1973, prohibits discrimination against certain handicapped individuals in any program or activity receiving Federal financial assistance. Although section 504 seems to have been modeled on title VI of the Civil Rights Act of 1964 which prohibits discrimination on the basis of race, color, or national origin in federally funded or assisted programs, section 504 makes no reference to a specific administrative or judicial enforcement mechanism. Consequently, the Department of Justice is giving careful consideration to the implications of this statute on our current and future litigation, including whether it might serve as a vehicle for additional action by the Department of Justice. As HEW develops specific procedures to enforce section 504, we in the Department of Justice stand ready to assist HEW in its enforcement efforts through referral of cases for court action or otherwise.

An issue related to the right to education for the mentally retarded is the type of treatment or habilitation afforded to residents of State mental retardation facilities. There is no doubt that there are and have been unconscionable failures to provide even the semblance of habilitative training in many of these institutions. The Civil Rights Division, through our Office of Institutions and Facilities, has been actively involved in litigation in this area. We have participated as a litigating amicus in cases involving institutions in Alabama and New York and have recently filed suit challenging as unconstitutional the practices of an institution in the State of Maryland.

That concludes my brief description of our activities in this field. As is obvious, our experience in this area of law is still very limited, and additional development of the law is needed before the parameters of our responsibilities can be more fully defined.

I will be pleased to answer any questions members of the subcommittee may have.

Thank you very much.

Mr. BRADENYAS. Thank you very much, Mr. Pottinger.

Did you, Mr. Rinzel, wish to add anything?

Mr. RINZEL. No, Mr. Chairman. I do not have anything in addition.

Mr. BRADENYAS. Let me ask you this, Mr. Pottinger. Several of the witnesses who have testified before the subcommittee prior to today's hearings have talked of the constitutional rights of handicapped children to educational services. The consent decree in Pennsylvania is cited as evidence of this right. On pages 2 and 3 of your testimony, you question the validity of court precedents such as the Pennsylvania consent decree as constitutional precedents.

Mr. PORTINGER. I would not want to undercut their validity as a precedent at large, as distinct from a narrowly defined legal precedent. There was no trial on the merits and the opinions of the court, the kind generally recognized by lawyers and other courts to that extent, does not serve as strong a precedent as a full trial would have. But the facts found in that case on the resolution of that case, I do not mean to say it should not stand as an important knowledge to this committee.

The consent decree does set forth the resolution which is perfectly valid and can be used by us in other cases, as well as this committee.

Mr. BRADENYAS. Would you want to venture any judgment on the question of the constitutionality in Federal courts on the right to appropriate educational services for handicapped children?

Mr. PORTINGER. Other than to say as I have in the testimony, we believe there are rights that do protect children in those circumstances. We believe they must be found and better defined. I would only say we are eager, in the Civil Rights Division, to continue a litigation program to do that. I believe we have found in a variety of areas, not only in the field of public education, but also in the field of the institutionalized mentally retarded, that fundamental rights are not being protected.

Mr. BRADENYAS. I understand, Mr. Pottinger, some States, by law, exclude physically and mentally handicapped children from school. I wonder if you would comment on the legality of those prohibitions?

Mr. PORTINGER. We do not believe that a labeling process, whether based on a careful analysis or a superficial analysis, should automatically lead a school system to exclude children from the public school system. Rather, it requires a very careful analysis of their needs and curriculum and supportive services available to the children. We believe the preferred situation would be to have the children in the school system wherever possible, to have them out of that system only where there are clear reasons they should be.

Mr. BRADENYAS. I am also struck by your citation on page 7, of section 504 of the Rehabilitation Act of 1973, which prohibits discrimination as to race, color, or national origin in federally funded or assisted programs.

I wonder if you would give us any further comment on the applicability of these provisions to the question of the rights of handicapped to educational services?

Mr. PORTINGER. We are very pleased to see the substance of section 504 of the Rehabilitation Act. We believe it addresses itself to a problem which is real and which has been identified in the course of our litigation.



However, as noted, section 504 does not provide for any enforcement, or a mechanism for enforcement. So we believe through litigation and HEW's ongoing analysis of how it can enforce 504, we will be able to assist HEW. We believe it ought to be used.

Mr. BRADENAS. Should Members of Congress take that response as an invitation to amend that legislation in order to provide for such enforcement authority?

Mr. PORTINGER. Well, I think, Mr. Chairman, when HEW completes its analysis, it may, together with the Department of Justice, wish to make such a suggestion. It might be premature for me to say that this morning because I know that analysis has not been completed. We believe through either existing mechanisms or through further legislation, if necessary, we can conduct appropriate enforcement mechanisms.

Mr. BRADENAS. There is a statement prepared by the Department of Health, Education, and Welfare concerning HEW's activities in this area.

[Information referred to follows:]

#### HEW ACTIVITIES WITH REGARD TO THE PROVISIONS OF SECTION 504 OF THE REHABILITATION ACT OF 1973

This paper describes the current efforts of the Office for Civil Rights of the Department of Health, Education, and Welfare to develop an effective enforcement program to carry out the responsibilities conferred upon this Department by Section 504 of the Rehabilitation Act of 1973.

Section 504 states:

"No otherwise qualified handicapped individual in the United States, as defined in section 7(6), shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

Section 7(6) of the Act defines the group of persons whose rights are protected by Section 504 as follows:

"The term 'handicapped individual' means any individual who (A) has a physical or mental disability which for such individual constitutes or results in a substantial handicap to employment and (B) can reasonably be expected to benefit in terms of employability from vocational rehabilitation services provided pursuant to titles I and III of this Act."

The Secretary of Health, Education, and Welfare on February 26, 1974, delegated responsibility for the enforcement of Section 504 to the Office for Civil Rights. The Office for Civil Rights (OCR) is responsible for the enforcement of the provisions of Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Executive Orders 11246 and 11375, and Sections 790A and 845 of the Public Health Service Act. The rationale for the assignment to OCR of enforcement responsibility for Sec. 504 is OCR's experience in the enforcement of nondiscrimination provisions and the need for a single focal point in the Department for matters involving discrimination of all types.

OCR is currently completing an initial analysis of the organizational and programmatic task which are required to effectively implement the requirements of the section. From this analysis a program development agenda with specific milestones will be evolved. Initial objectives will be the development of regulations, staffing level projections and an overall enforcement plan. In broad outline, the organization and enforcement approach will probably closely parallel the Title VI and Title IX compliance programs. It should be underlined that while OCR will be able to borrow on its previous experience in investigating problems of discrimination and developing appropriate remedies, a new expertise in relation to the capacities and limitations of physically and mentally handicapped individuals is required. A number of specific issues to be resolved include an operative definition of the protected class and the nature and extent of the coordination between government Departments. The background data-gathering and regulation drafting tasks in light of these problems will be complex and particularly important objectives.

In order to proceed as quickly as possible with data gathering and policy analysis tasks necessary to finalize a regulation, OCR is attempting to directly benefit from reviews already undertaken pursuant to Title VI of the Civil Rights Act of 1964. These reviews were generated from allegations of racial discrimination in service delivery systems for mentally retarded children and adolescents.

Because of our concern that initial data collection and analysis pursuant to development of the enforcement program under Section 504 proceed quickly, the Office has decided to broaden its current equal educational services program to include a complete review of potential discrimination against children on the basis of physical or mental handicap by public elementary and secondary schools.

The equal educational services approach was developed in the initial planning for a compliance review to ascertain whether there currently exists equal treatment in delivery of educational services to minority and female students served by the New York City Public School System.

The review has become a prototype for the equal educational services program. The planning phase for the review which was completed last month has produced an extensive outline of specific inquiries which need to be made in order to determine current compliance with nondiscrimination standards in several important areas:

Whether comparability exists between racially/ethnically identifiable schools or districts (or between schools operated for the handicapped and schools operated as part of the regular education program) with respect to instructional expenditures, facilities, and other services.

This issue will include analysis of whether the State of New York allocates resources in a manner which (1) disadvantages minority children in New York City in comparison with other New York State children, or (2) disadvantages handicapped children as compared with nonhandicapped children.

Whether educational services being provided to children place them in educational and cultural environments which prevent nondiscriminatory access to educational services from which they could reasonably be expected to benefit, or include the use of curriculum materials which dictate a permanently lower level of educational achievement regardless of academic potential, as a result of their race, color, national origin (including its accompanying language system, or high incidence of migrant status), sex or handicap.

This issue will include an analysis of the threshold "right to education" question as well as matters related to the comparability between the educational program provided by the school system and the educational needs and potentials of handicapped children.

Whether the effect of assigning children to ability groups or tracks, special schools or special educational programs is to create and maintain isolated environments within the schools so as to place children at a disadvantage because of their race, national origin (including language), sex or handicap.

Whether children are treated differently on the basis of their race, color, national origin, sex or handicap in the conduct of school-sponsored extra-curricular activities, counseling or disciplinary procedures; and whether day care and Headstart programs are free of discrimination.

In order to collect, store, and analyze effectively all the data needed for the review, OCR is developing an automated compliance information system.

The system has been designed to permit maximum flexibility in data analysis while at the same time maintaining complete confidentiality of all data collected, as required by Federal and State law.

During the planning phase, OCR, with the assistance of an outside contractor, has identified the specific data items necessary for a careful analysis of the issues and a complete answer to the questions identified in the outline. After this task had been completed, a "data base" structure for the review was developed which will organize the data items identified in the preceding step.

Plans are already under way to expand the prototype effort to four other cities during the next year: Chicago, Houston, Los Angeles, and Philadelphia.

The automated information system being developed for the prototype can and will, with simple modifications, be used for each of these review efforts. This system is currently being modified to provide data collection and analysis capability to determine the answers to most important questions involved in a determination of compliance with Section 504.

Mr. BRADEMAs. In our hearings on the 7th of March, the dean of the Notre Dame Law School, Dean Shaffer, testified here.

I don't want to seem chauvinistic but there is a National Center for Law in the congressional district which I have the honor to represent, and I hope you might be able to get helpful information from them.

Dean Shaffer made an observation which is familiar in your line of work and all the more familiar now that two decades have passed since the *Brown* decision. At Notre Dame this week, a number of persons are speaking about the implications of that decision. Dean Shaffer observed that we should note that the rendering of that decision is far from the fulfillment of providing equal educational opportunities.

In essence, I suppose one could say one of the reasons some of us introduced H.R. 70 is that it is one thing to assert the right of the handicapped to education and another to implement it.

Could you give us any comment on this observation?

Mr. PORTINGER. First, I do not think it in the least chauvinistic for you to make the reference that you have made. We are aware of the center and are aware of the work it is doing. I hope to rely on some of their findings and will be on the campus this Friday to meet Dean Shaffer, if that can be arranged.

I believe the statement made, as you have just quoted it, is one we have found to be true in our experience. Unless we take vigorous enforcement action of a kind we are attempting to do at present, we will have done less than our responsibility to fulfill judiciary mandated regulations. The law itself in this newly developed area has not been as defined as in some other areas. So we carry somewhat of a two-edged sword, on the one hand to create the law and on the other hand to fulfill it.

As to H.R. 70, I do not have specific comments at this time. Mr. Chairman, I understand HEW has testimony on the bill and they have taken a lead role in that regard. We certainly are in agreement with the need for vigorous enforcement.

Mr. BRADEMAs. I might quote one other witness on the same day, Patricia Wald. She stated that lack of adequate funding for implementation can corrupt any right to education constitutional guarantees.

While I realize you are not in the business of implementing the rights, I hope the time will not be distant when the left hand will shake hands with the right and I offer that in no ideological way.

Finally, could you give us any observations about the adequacy of the procedural safeguards in the bill, particularly, with respect to the matter of the identification and classification of handicapped children?

Mr. PORTINGER. I regret to say I have not studied the bill for that purpose. I would be happy to do so, if you wish, and supplement the record. I think that would be better than for me to make comments on it at this time.

[Information supplied by Mr. Pottinger follows:]

DEPARTMENT OF JUSTICE,  
Washington, D.C., April 23, 1974.

Hon. JOHN BRADEMAs,  
Chairman, Select Subcommittee on Education, Committee on Education and Labor, House of Representatives, Washington, D.C.

DEAR CONGRESSMAN BRADEMAs: During my testimony on March 18, 1974 before the Select Subcommittee on Education concerning the efforts of the Department

of Justice in the field of education and the handicapped, I was requested to review the due process aspects of H.R. 70 and offer any relevant comments.

The due process safeguarded in the Bill are primarily contained in § 7(a) (5) which requires that state plans under the bill provide, among other things, for notice and an opportunity for hearing concerning classification of a child as a handicapped child. These due process elements appear to be those generally included in court orders in the handicapped children's right to education cases which I mentioned in my testimony.

However, these court orders have also generally included a requirement for periodic reevaluation of the appropriateness of a student's classification as handicapped. See *Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania*, 343 F. Supp. 279, 308 (E.D. Pa., 1972), where reevaluation was required every two years; *Wills v. Board of Education of the District of Columbia*, 348 F. Supp. 866, 878 (D.C., 1972), which required periodic reviews of the child's status and progress; and *Lebanks v. Spears* (C.A. No. 71-2897E, E.D. La., April 24, 1973) which required a reevaluation of the child's status, diagnosis and progress every three years. Although § 7(a) (7) of H.R. 70 requires procedures "for evaluating at least annually the effectiveness of special educational programs and services in meeting the needs of handicapped children," it is not clear whether the required evaluation applies to the program or to the children.

I hope that you find these brief comments helpful.

Sincerely,

J. STANLEY PORTINGER,

Assistant Attorney General, Civil Rights Division.

Mr. BRADLEYMAN. I think it would be helpful to the subcommittee if we invite you and your associates to take a look at H.R. 70 with regard to procedural questions and any other questions you deem appropriate and then for your department to comment thereon.

Mr. Eshleman?

Mr. ESHLEMAN. I missed most of your testimony, but I gather you said in effect the Federal Government has a legal obligation for the education of the handicapped. Would that be a correct summary?

Mr. PORTINGER. Well, I was speaking to the Justice Department's role specifically. I believe we have a responsibility under the Constitution.

Mr. ESHLEMAN. Is that not a Dutch way of saying it?

Mr. PORTINGER. Yes, I think it is important to define the legal obligations. It has two points, as I see it: One is to determine what the rights are; and, two, to litigate, to enforce them.

Mr. ESHLEMAN. I realize you are not in the financial part, but I want to pursue that a little further. The Federal Government gives about 8 percent to education. The rest is divided between State and local governments. In your opinion, is 8 percent sufficient for the support of the education of the handicapped? Would that fulfill a legal obligation?

Mr. PORTINGER. I honestly do not know, Mr. Congressman. I do not know whether it would or would not in any given situation; 8 percent may in some situations suffice, and in others that I know of, I doubt seriously that it would.

Mr. ESHLEMAN. In your lay opinion, then, in the area of the education of the handicapped, the Federal Government should assume the greater percentage of support. Do you agree with that, as an individual, that it should?

Mr. PORTINGER. Whether it is 75 percent or 100 percent, it certainly could be greater than 8 percent. Our opinion has been in litigation where State, local, and Federal interests are involved, that where a constitutional right is denied, there can be no cost excuse for failure to provide an answer. We then turn to the court and ultimately

resources must be obtained from any source. We do not get into where those resources should come from.

Mr. ESHELMAN. Strictly from a Department of Justice angle, would it be unconstitutional or illegal to share the cost between the three levels of government or share in a reasonable proportion in what was deemed to be a reasonable proportion, but it would not be? In other words, the Federal Government could fulfill the obligation without assuming 100 percent of the cost. It would be all right for the State and local governments to assume part of the cost?

Mr. POTTINGER. That would be correct, as well as for the hypothesis you give—that is, the Federal Government could share. The three-way sharing is certainly not unconstitutional.

Mr. ESHELMAN. That is all.

Mr. BRADEN. Thank you.

Mr. Mazzoli?

Mr. MAZZOLI. I have no questions, as such. I do want to commend you for bringing up to this important point. One of the first battles I was engaged in, in 1968 and again in 1970, was on this very topic. That is, to provide an education for autistic children in Kentucky. It was a very strong battle fought by the school districts on the basis of cost and convenience against teaching these children. So whether we can do it by law or consent decree or whether we order an equal sharing of the costs, I think there is a need to do it. I accept what you said, Mr. Pottinger. I commend the gentleman from Indiana and if I might exhibit a bit of chauvinism, I have been to the very school this gentleman has the good fortune to represent. So take advantage of the law school.

Mr. BRADEN. Thank you.

Mr. Hansen?

Mr. HANSEN. The effect of the court actions, resulting mainly in consent decrees, is to establish rather firmly the constitutional right of a youngster to a public education regardless of whether he has some handicap.

To what extent is there an obligation on the part of the Federal Government to provide this education? Does litigation establish what you believe to be the constitutional obligation on the part of the Federal Government?

Mr. POTTINGER. No, sir. It has not. Our focus has been, as it always is in civil rights cases, to identify what we believe to be constitutional or statutory violations, then to require a remedy to be prepared. Depending upon the case or the area of the law in which we are dealing, the resources, in order to provide that allegation, will be different. In some cases, they will come from local authorities and in some cases a sharing between Federal, State, and local authorities. Our position is to make sure that short of the impossible, which the law never requires, that there is in fact a remedy to a known violation and this is the general procedure we have followed in the area of the rights of the mentally retarded.

Mr. HANSEN. Suppose an action is brought against the Federal Government and it went all the way through the courts. What, in the light of what we have seen, would be the result of such a law suit?

Mr. POTTINGER. The remedy could only be applied with the reallocation of some new resources or personnel, is that it?

Mr. HANSEN. Let us assume, for example here, that the plaintiffs were seeking an allocation of money from the Federal Government to a particular State or school district for the purpose of financing a program for the handicapped. What would be the result?

Mr. POTTINGER. Ordinarily, in a case of that kind, we would identify with HEW. The left and right hands, as the Chairman mentioned would get together. We would identify the availability of resources that might impact on the problem.

The 14th amendment addresses itself to the responsibilities of the States. In attempting to address this, we would assist the State in determining what resources were available. We do not litigate against Federal agencies. There is a specific identifiable role to be played and that has a constitutional magnitude to it.

Mr. BRADY. What I gather you are saying is that it is really the States that have the primary constitutional obligation to provide education for the youngsters.

Mr. POTTINGER. Absolutely. The 14th amendment insures they are provided such education. So it is essentially a State responsibility.

Mr. HANSEN. Our problem here would not be so much to respond to some court decree as it would be to determine on the basis of other considerations, the role in which the Federal Government can be most effective?

Mr. POTTINGER. Precisely.

Mr. HANSEN. It may be—this happens to be my view—that the Federal Government could perform a unique role in supporting the kinds of research efforts that will lead to some of the answers on how to diagnose the handicapped, how to teach the special teachers and others who have the responsibility for development and the carrying on of these programs. There are many areas, where the Federal Government can provide services in a much more efficient way than the States themselves can. But the bulk of services, as with other programs, will still have to come from the States.

Mr. POTTINGER. That may be the case. It is undoubtedly a matter of debate as this committee will be debating. My view is, as long as we continue to litigate and private plaintiffs litigate cases of this kind, there will be continuing revelations as to possibly unconstitutional practices which may compel allocation of resources from whatever sources.

Mr. HANSEN. The Federal response and the contribution made from the Federal Government, if I understand what you are saying, should be more as a policy judgment as to the responsibility that should be assumed in this very critical area, rather than a response to some precise directive that may emerge from court decisions or consent decrees?

Mr. POTTINGER. Yes.

Mr. HANSEN. Thank you.

Mr. BRADY. Thank you very much, Mr. Pottinger. Your testimony has been very helpful to us. I hope you have a good time at Notre Dame.

Our next witnesses are Thomas Nobis and James Cone. Mr. Nobis is a professional football player, a linebacker with the Atlanta Falcons and coach of the Georgia Olympics for Handicapped Children. He is the originator and the head of SCORE, an association of professional

athletes which raises money for handicapped children programs. Mr. Nobis has received a number of awards for his work in this area.

Mr. Cone has, for the last few years, been chairman of the Georgia Olympics for Handicapped Children and is responsible for much special legislation in behalf of handicapped children.

We are very pleased to have both of you here today.

**STATEMENT OF THOMAS NOBIS, LINEBACKER, ATLANTA FALCONS,  
AND COACH, GEORGIA SPECIAL OLYMPICS, ACCOMPANIED BY  
JAMES CONE, DIRECTOR, DEKALB COUNTY PARKS AND RECREA-  
TION DEPARTMENT, STATE OF GEORGIA**

Mr. Nobis. Thank you very much, Mr. Chairman. First of all, I would like to restate, I am a professional athlete but I do have some strong feelings in the field relating to handicapped children.

I am sure you read and hear a lot about professional athletes. We supposedly endorse a lot of products for a lot of money. Well, a lot of this does not come my way but I am endorsing the product we are talking about this morning, that is the exceptional child. I endorse this at no charge. I am not being paid to come here today to speak to you. In my work with these youngsters, I have never received any payment. There are a lot of other athletes and people in my profession who do the same. These fellows really feel the same way I do, they see a need. They see an area in which they feel they can help. So they jump up and try to do so.

In the past few years I have been involved with mental retardation. I have served as chairman of the membership drive of the Atlantic Association for Retarded Children for the past 2 years. Also, I have served as head coach for the Georgia Special Olympics for Handicapped Children, a program set up for the mentally retarded youngsters of our State. The special olympics is also a nationwide program.

Before I got involved, I wanted to know more about those youngsters, what the problem was, just how important recreation is to these youngsters. So I toured around the State to the different schools. I visited public schools. I went to private institutions, public institutions and it did not take long for me to see just how important education is to those youngsters. Also I realized just how important a tool recreation is to help educate these youngsters.

I do not know how the State of Georgia compares with other States in the United States. They provide educational opportunities for the exceptional child. They have a real fine program there. But at the same time, it can be improved and it should be improved. I did go into some schools, old abandoned elementary schools that have been set up to provide special education.

Here you are though, in an abandoned school which is really out of date, the facilities obviously not the greatest. But these kids are being educated in these facilities. The one thing I have found by going and touring with these youngsters, they really do not complain. They appreciate what they have, whether a new facility or old facility, or whatever. They appreciate it.

You do not have the arguing, complaining, the things that you find in some other programs. These youngsters are happy. They have some-



thing to work toward or compete in. If they win a medal or an award, they are happy. If not, they do not complain. I think this is common among all of them. They really appreciate what they have.

As far as being an American citizen, which I am, I feel we do owe it to handicapped children to offer them a good sound education and to work and provide an educational system that will reach not only myself, but all handicapped children.

In the Atlanta area, we now have all four of the major professional sports, football, basketball, baseball, and ice hockey. We have organized SCORE, which stands for Sports Charities Offering Recreational Education. The money we raise in our telethons benefit handicapped children. Whatever the organization or the program may be, we are taking the money and supporting such programs.

In the past, the biggest part of it has gone toward providing summer camping experiences. We have included the deaf and disadvantaged youngsters in this group also.

This year, our third annual super sports telethon, in which again I have the support of most of the professional athletes in the Atlanta area, the money we raise will help support the Georgia special olympics program. There is no finer one around and we feel the dollars we will take in from the general public could not be put to better use than to help organize and promote the special olympics program of our state. SCORE again will support the special olympics program in a big way.

Mr. Chairman, I would like now to open it up to any questions you might have.

Mr. BRADENYAS. Thank you very much, Mr. Nobis, for a most impressive statement. I want to commend you and your fellow athletes in the Atlanta area for the leadership that you are showing. I hope athletes in other large cities are showing the same interest. Is this the case, or are you alone in Atlanta as athletes supporting an interest in this kind of program?

Mr. NOBIS. I think our organization, SCORE, which is made up of athletes from the four sports we have in the Atlanta area, is unique. I do not know of any other organization, as such. But in your local area, the professional athletes are involved. I have friends on other teams throughout the United States who spend a lot of their spare time working with programs such as this.

Mr. BRADENYAS. Mr. Cone, do you have any comment?

Mr. CONE. There is very little difference between me and Tommy, except he weighs 40 pounds more and is a pro football player now and I am a has-been.

We have seen these youngsters become a part of something by being associated with the special olympics. We have seen them being able to relate to something and being outstanding citizens and becoming winners. I think we all would like to excel in something. Through our efforts, we have been able to make this a possibility in the State of Georgia.

We feel this is just one part of educating these children and Tommy and I both, in going throughout the State and observing the educational programs for these exceptional children, see many things that need to be done. We are trying in our small way to provide some of these services and meet some of these concerns. But, of course, we are



just feeling ourselves. We can provide some of the recreational services, but we cannot provide all the services. They need assistance. Whether you are teaching them to read or write or just to care for themselves, all these things have to be taken into consideration.

Tommy and I will be doing our part along with a lot of people. Additional help is needed.

Mr. BRADYMAS. Have you had an opportunity to study the bill that we are considering? The general theory is to provide general funds to enable States to reimburse local school districts for up to 70 percent of the cost of educating handicapped children. Do you favor the legislation?

Mr. NOLIS. Yes, I am all for it.

Mr. CONE. As I was stating, a lot of effort has come forth but it is impossible to meet these needs and your bill would be very, very helpful.

Mr. BRADYMAS. Thank you very much.

Mr. ESHLEMAN?

Mr. ESHLEMAN. I have one question. Your SCORE organization, do you work inside the school system or outside the school system, or is it a combination of both?

Mr. NOLIS. Our organization is 3 years old. Up to this year, we have been reaching several hundred children. With a 6-hour telethon, we raised \$33,000 in 6 hours last year. We were able to work with several hundred children plus support the State special olympic program in a small way. But we work through the schools, with some private agencies, with some institutions.

Mr. ESHLEMAN. These activities, do some of them occur during the school day?

Mr. NOLIS. No, sir. Most of the money has been raised to provide a summer camping experience for these youngsters. I would like to see SCORE, starting this year, support in a big way the Georgia special olympics program, which works through the public school system.

Mr. ESHLEMAN. Thank you.

Mr. BRADYMAS. Mr. Mazzoli?

Mr. MAZZOLI. Do you work at all with the Jaycees?

Mr. NOLIS. Yes, sir. The Jaycees help put on, I guess, just about every olympic program that goes on. In fact, the Jaycees organization provided the manpower behind the State meet last year.

Mr. MAZZOLI. The reason I ask you is in Louisville the Jaycees are pretty much the prime mover and they supply most of the manpower and do a tremendous job, very successful.

In your special olympics, do you take the position, Mr. Cone, perhaps that all the children are winners? They always get something for having participated?

Mr. CONE. Yes. They all receive an award of some type whether they come in fifth or tenth. We had less than 1,500 children in the beginning; last year we had 18,000; this year it looks like it is going over 20,000.

Mr. MAZZOLI. Thank you.

Mr. BRADYMAS. Thank you both, gentlemen. We look forward to seeing your example followed elsewhere in the United States.

Our next witness is Hon. Blair Lee, III, Lieutenant Governor of the State of Maryland. He is accompanied by Stanley Mopsik, Coordina-

tor of Services to Special Education of the Maryland State Department of Education.

We are pleased to have you and Mr. Mopsik with us. Go right ahead.

**STATEMENT OF HON. BLAIR LEE III, LIEUTENANT GOVERNOR,  
STATE OF MARYLAND, ACCOMPANIED BY STANLEY MOPSIK, CO-  
ORDINATOR OF SERVICES TO SPECIAL EDUCATION, MARYLAND  
STATE DEPARTMENT OF EDUCATION**

Mr. Lee. Mr. Chairman and gentlemen, you may not realize it, but you are getting two linebackers in a row now. I would not want to mess with Tommy Nobis on the gridiron, but my job is essentially the same as his. The office of Lieutenant Governor varies widely and in many States the lieutenant governor is almost an ornamental fifth wheel presiding over the State Senate and doing nothing else.

In Maryland, where it is a relatively new office, it has been set up differently. I have no official legislative duties whatever. My office is right across the hall from the Governor's office. I spend my entire time in my office being a linebacker for the Governor.

The message I bring you today comes from Governor Mandel as well as myself. My duties as described in the State Constitution are simply what he delegates to me. He is a very good delegator. I might say he has chosen to delegate to me a fairly large range of activities, including executive surveillance over the field of education and particularly over the fiscal aspects of this as it appears in the State budget each year.

I will cut you in on a secret, at least I have been trying to keep it a secret. I am the person in the State government who signs off for the Governor on all educational budgets after they have been processed by the State department of budgets and just as they are on their way to the printer to go into the Governor's budget. So I am painfully familiar with the subject at hand.

The State of Maryland is at a rather critical juncture in the development of education for handicapped children. Let me say one thing, parenthetically, I do not have a formal duplicated statement with 50 or 60 copies for you. In fact, when I signed aboard last week as a witness, I was reluctant to do so because I knew perfectly well, since our State legislature is in the final stages of its session with all of the accompanying turmoil, I knew there was not going to be adequate time for a formal presentation. I do have a single sheet showing for a 10-year period funds budgeted for education of handicapped children in Maryland.

For a great many years, going back to the early forties, the annual appropriations started out, I guess, around \$50,000. It took 20 or more years to work its way up to \$2 million and then in 1966 there was a legislative study committee that sort of got us off the ground. You will observe in the second column of this table that the appropriations have skyrocketed ever since, at least that is skyrocketing in terms of the Maryland budget.

In the short space of 10 years, the appropriation has gone from \$2 million to \$35 million. In the third column, you will note that it is an ever-increasing percentage of the total general fund budget. When I say general fund, obviously I am excluding all Federal aid, local

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contributions and for purpose of this thing, I am even excluding the expenditures that are made for institutions, for the hospitals, the appropriations for the State school for the deaf and things like that. This is State aid to the 24 school districts of Maryland.

A year ago, the legislature enacted and the Governor signed a very strong bill setting up a mandatory law for the education of all handicapped children. They did, however, neglect to provide the funding of the bill, which leaves us in something of a bind.

When the budget request came in this year, the State Department of Education, rather blithely, asked for \$52 million. Now, we stand in really great need of help. When I say "we," I think at this moment I can speak for all the States in this country. I do not base it on a legal assumption of Federal legal responsibility. I would have to agree with Mr. Hansen's view of that, but simply this is one area of categorical aid to the States that is really, really needed.

It has been said, at least I have read it, that some members of this committee, of the full committee, are unhappy about the dimensions of H.R. 70 and would like to see it cut down. I heard one member of the subcommittee suggest that the Federal effort should be limited to research. I suspect, Mr. Chairman, that the right answer may lie somewhere between the provisions of the bill, the financial provisions of the bill as written, and the rather wistful notion that research will get us out of this jungle, which it will not. We need more than just research aid.

It is not for us from the States to tell you what amount of aid should be allocated. I really think that is up to you gentlemen to fill out what the Federal capability is. But, believe me, we do not need an issue, we do not need an argument. We need tangible help. If the amount is more modest than shown in the original bill, I think you will find the States satisfied. We would like to see a start made which will result in a sharing ultimately of this very large program among the three branches of Government.

As Mr. Pottenger told you, the States are the prime targets of all the cases in the courts and we do accept that responsibility. We are obviously going to need some continued help from the localities and the school districts and, believe me, we are going to need help from the Federal Government if we are to achieve the goals or the responsibilities that are set forth in the Pennsylvania decision and in our own new law. It is a new law that has been paralleled in a great many States.

I have read this bill very carefully. I could take up your time with some nit-picking, from which I think I will refrain and address myself to only one problem that I have with the State plan as provided in the bill. I might say in passing, most of the requirements of the State plan are not only acceptable to my State but are actually provided for in our own laws as of now.

On page 14 of the bill, in subsection (16), we come to our old friend, maintenance of effort. This poses a problem. I can understand the Federal Government's desire that the State governments not be in a position of receiving large amounts of Federal largesse and then using that to supplant their own previously appropriated funds. But there are some very real pitfalls in this maintenance of effort provision in this particular bill. One of them, of course, is the very obvious fact

that some States of their own volition have moved forward more progressively than others. Under a rigid maintenance of effort provision, the more lackadaisical States are going to be rewarded and the progressive States are going to be penalized. I think there is going to be a tendency for these States to freeze in their present condition unless we can come to some meeting of minds on the maintenance of effort.

Put yourself in the position of the State budget officer who knows there is a move afoot in Congress to come to the aid of the States. He knows the bill contains a maintenance of effort provision which will have the effect of adding the Federal aid to whatever the State is already doing. He is going to be a little reluctant to go charging ahead out of the State's own treasury, simply digging a deeper hole for himself as he goes.

I wonder, therefore, if the members of the committee and your very able staff could not find some cutoff point that might be fair? I would not be so bold as to suggest doing away with the maintenance of effort requirement altogether, because I know the States too well and some of them, perhaps even us, might take advantage of you. But I think somewhere there ought to be a cutoff so you might say that the level of State aid with the use of Federal funds could not sink below the level of fiscal 1972 or 1973 or something like that. I think without that, there is going to be a real problem.

That is the message I bring you, sir, and although I am perhaps not the world's most ardent advocate of categorical aid, this is one bill I am real hot for and, as the chairman said, this will be a real landmark bill.

Mr. BRADY: Yes. Thank you.

Mr. Mopsik?

Mr. Mopsik, I would like to make some general comments as to the legislation. It may be of interest to you, as a result of the tremendous increase in the amount of funding, we have also had an increase in the number of special education youngsters being served.

Back in 1966, we were only serving some 3,000 children. Based on 1974, on data we are developing now, it appears we will be serving some 76,000 children in the State of Maryland. We are looking at something like 12.5 per cent of the children in Maryland needing some type of special education service. That would put us over 110,000, 115,000 children needing the service.

While school population are actually increasing, the school population in Maryland has gone down some 25,000 in the past year. We have had a normal business increase for a special education. This is for children that are being served as a result of better diagnostic procedures.

With respect to H.R. 70, one of the things I would like the committee to consider is a system of early identification. I think the item that indicates it is No. 2, page 10. One of the great problems in this country, and I think much of the data we have—I just gave you some incident data which I am not sure is accurate because that is generally reflected from data from the States which is sometimes inadequate. What we need is to develop some statewide system for identifying children at the earliest possible time. I believe the State of Maryland is a forerunner in this respect. We have developed, with the help of five other agencies in the State, a statewide data system which has caused us

many problems with respect to confidentiality and other things, but which we think is an extremely sophisticated system in determining what the children's needs are. We have some 7,000 individual records and by the end of this year, we will have some 100,000 records in this system.

In my prepared statement, I have indicated some of the advantages of this system. I think it would be necessary for all States to have a system if we are to get a handle on the handicapped children.

Some of the things this system will accomplish are: it will provide for short- and long-range planning for handicapped children; provides data for accurate budgetary decisions based upon the needs of the handicapped; allows for interagency involvement; prevents the duplication of agency services; provides information useful to determine title VI of the Civil Rights Act compliance. My concern about that is that section of the bill be strengthened to mandate each State to maintain such a system and for it to be of sufficiently sophisticated nature that will get at numbers and dollars, et cetera.

Another thing the Lieutenant Governor has mentioned, we passed some very progressive legislation in the State of Maryland last year, covering children from birth through age 20. I believe H.R. 70 addressed itself to a population through age 20. It would be my suggestion that any such bill should address itself to the birth through 20 population. It is necessary to pick up handicapped children as soon as they are born. It is my belief it is necessary to go down as low as birth.

For instance, now we have some programs operating in the State using some State dollars, going to birth. We have a preschool hearing program where we work with children, severely impaired children at birth, to provide the parents with the tools necessary to work with their children. It is my belief any such legislation has to start addressing itself to the birth through 20 population if the legislation is also to be a preventative measure.

[The prepared statement of Mr. Mopsik follows:]

PREPARED STATEMENT OF STANLEY MOPSIK, COORDINATOR OF SPECIAL EDUCATION,  
MARYLAND STATE DEPARTMENT OF EDUCATION

Mr. Chairman and Members of the Committee: My name is Stanley Mopsik, Coordinator of Special Education, Maryland State Department of Education.

I am here today to support H.R. 70 on behalf of the National Association of State Directors of Special Education. The provision of a free public education to all handicapped children as soon as possible has become the professional mandate of special educators throughout the nation. National incidence figures indicate that 52% of the handicapped children within the United States are not receiving an appropriate education. In the State of Maryland that figure is approximately 40% of the school age population. While Maryland's programming and funding for the Handicapped has expanded 30 times since 1965, it is still unable to meet the needs of all children within the State. It is imperative that some form of federal assistance supplement State and local efforts on behalf of handicapped children.

Some of the positive aspects of H.R. 70 achieve the goal of equal educational opportunities for handicapped children in the following ways:

1. The bill establishes a formula for providing excess cost funding over and above State and local contributions. The need for these federal contributions is a necessity by the fact that education for the handicapped child often runs two to three times the per pupil expenditure of the normal child. This can be documented by a recent study by Rosmiller, Hale, and Froehle. Although the Rosmiller study provides the most comprehensive information available on special education funding, it leaves many questions unanswered,

on special education funding, it leaves many questions unanswered, as the as the determination of specific special education programmatic costs has been extremely difficult to determine due to poor local and State education agency reporting and auditing practices.

2. H.R. 70 recognizes the fact that education for the handicapped must begin at the preschool age. The State of Maryland in a most progressive piece of special education legislation, passed during the 1973 session of the Maryland General Assembly, has mandated coverage to children from birth through age 20. Since it is crucial to identify and diagnose handicapping conditions at the earliest possible stage, we would therefore suggest amending H.R. 70 to include age delineation as specified in the Maryland legislation.

3. In addition, H.R. 70 does provide for the development of a statewide system of identification. The State of Maryland has developed a six agency data system for the purpose of maintaining information on handicapped children within the State. The agencies involved are the Department of Mental Hygiene, the Mental Retardation Administration, the Department of Social Services, the Department of Education, the Department of Juvenile Services, and the Preventive Medicine Administration. This system will allow us to accomplish the following:

- (a) Provide for short and long range planning for handicapped children
- (b) Provides data for accurate budgetary decisions based upon the needs of the handicapped
- (c) Allows for interagency involvement.
- (d) Prevents the duplication of agency services
- (e) Provides information useful to determine Title VI of the Civil Rights Act Compliance

Children are the country's primary resource, and as such, every child is entitled to an optimal education to maximize his contributions to the continuing development of our nation. The federal role in sharing in the support of educational programs for the handicapped is necessary if they are to become contributing taxpaying members of society.

Mr. BRADEMAS. I have just a couple of questions. We will have a witness later today from the administration who will testify to the effect that the Federal role in education should be limited to fostering capacity building in the States and not providing money along the lines of H.R. 70.

Mr. LEE. Can you tell me what he means by fostering capacity building?

Mr. BRADEMAS. I think that means not spending any more money but rewriting the organizational charts.

Mr. LEE. That is just totally inadequate, Mr. Chairman. If I were a part of the administration, I might be disturbed about the total price tag of this bill. Frankly, I do not know what the total price tag is. Your staff becomes very elusive when questioned on that.

Mr. BRADEMAS. I am relieved to learn that.

Mr. LEE. But I have seen a scorecard on the comparatively similar Senate bill which is a little alarming. Perhaps somewhere between the actual price tag of the bill and this "capacity building" report, and that is really what it is, lies the right answer. I really seriously think the problem before the Congress now is getting a system of tangible aid going, getting it set up. I do not think it has to be as big as this bill calls for but it should not be as small as just the research or just capacity building.

Mr. BRADEMAS. I just have one other question to put to you, Governor. I understand the Maryland Association of Retarded Citizens is now suing the State of Maryland, charging the constitutional rights of retarded children are being violated in that they are being excluded from public schooling.

I wonder if you could tell me if that information is correct and the status of that suit?

Mr. LEE. The information is correct. Ours is in State court. I am not sure what the precise status of it is right now.

Mr. BRADYMAS. Mr. Mopsik?

Mr. MORSEK. This case was originally filed in Federal court, remanded to the State court because it was felt it was not necessary to deal with some of the constitutional issues of the suit. The case has been tried in Baltimore, Md. We are awaiting a decree from the judge. I think some of the areas that the court will probably hit will be concern about the approval of day care programs within the State of Maryland. They are not presently approved as educational programs. Much of the suit revolved around what education is. I think also there will be some increased necessity for providing additional funds, most definitely to provide probably free transportation for all handicapped children, no matter where they are engaged in their educational program and provide a fully approved and accredited program in all our institutions. To do this with immediacy is going to take a very, very large outlay of additional dollars.

Mr. BRADYMAS. Thank you very much.

Mr. QUINN?

Mr. QUINN. Mr. Lee, I am looking at this chart for 1975—\$35 million. Is that correct?

Mr. LEE. Yes.

Mr. QUINN. Now, if you are going to adequately take care of all the handicapped children in the State, what would the figure be?

Mr. LEE. The departmental request at the time of the budget was \$53 million. I do not know if it contemplated taking care of all handicapped children.

Mr. QUINN. Do you know what it would be, Mr. Mopsik, if you were going to take care of the total amount?

Mr. MORSEK. The State's share is not the only share that goes to the handicapped youngster. There is a provision that each local unit must contribute their average per pupil share to the educational expenses of the handicapped child. Then our State appropriation supplements the dollars. Presently, we determine local units are spending close to \$30 million of their own money on the education of the handicapped child. I would venture to say, and this is only a guess, I have no accurate knowledge of finance, it would be close to \$100 million.

Mr. QUINN. State and local?

Mr. MORSEK. Combined.

Mr. QUINN. When you provide State aid to the local school districts, do you take under consideration the capability of the local school district to finance its education? Is there an equalization that comes into play?

Mr. MORSEK. There is some equalization based on the fund formula in the regular State aid. There is no equalization applied in the handicapped formula. It is on a per capita basis.

Mr. QUINN. It looks to me as though the State is paying a little bit over half. What about the school districts with less capability to pay? What are they running into?

Mr. MORSIK. The absence of programs, because of the fact they must supplement their dollars. Many of these programs have very, very high-cost factors. They are presently unable to sustain programs, especially in what we would consider the low-incidence handicapping conditions such as hearing problems, visual problems, severely retarded areas. It is very difficult for them to establish programs. So, in some cases, there are no programs. Unless we get to some kind of regional approach, a number of local counties getting together, many of these children will not be served.

Mr. LEE. While you were out of the room, I mentioned that a year ago the State of Maryland passed a strong mandatory bill but neglected to provide funding. Arguments have gone on since then as to how this should be funded. In fact, there is no bill pending in the present session to deal with it. One of the main points of argument is the extent of equalization.

Mr. QUJE. What are you extending now for learning disabled children as differentiated from handicapped, dyslectic, et cetera?

Mr. MORSIK. We have just hired in the State department of education two full-time auditors to audit special education programs. At this point in time, we have audited five local units and received some cost factors. But because of the fact they are not represented units, really not able to have some actual firm data as to what these programs cost. I think this is a very elusive area because nobody knows what costs should be counted in, in arriving at a school budget. So the figures are very inaccurate as to what a special education program actually costs.

Mr. QUJE. You got into the handicapped. I gather there is no program for learning disabled?

Mr. MORSIK. It is in the thousands. We must have 10,000 or 12,000 children in a learning disabled program. But to get a handle on how much is being expended is extremely difficult.

Mr. QUJE. Is there a State program for the educationally disadvantaged over and above that which you receive from Federal funds?

Mr. MORSIK. That is not considered a special educational program in our State but there is density.

Mr. LEE. That is dealt with by means of a State law called density aid, having to do with the population per square mile. It ends up being limited entirely to the city of Baltimore, where the problem is. I think the city gets something like \$15 million in title I money and that is supplemented by about \$9 million under this density aid.

Mr. QUJE. If the Federal Government goes into financing special costs for handicapped, do you think we ought to provide equalization among States the way you suggest you need to provide equalization between school districts in Maryland? Some States are less capable of funding education.

Mr. LEE. It is a difficult question for me to answer because we invariably lose out every time you start equalizing. I do not know that the basic concept of equalization asserts itself quite as strongly in this particular subject area as it does in more general fields. Here you are dealing with actual handicaps, actual costs. Frankly, I can make

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a reasonably strong case either way and I will be happy to go along with whatever you come up with as long as you come up with something.

Mr. QUIE. When we are dealing with handicapped, it seems we are dealing more with fixed costs. You have the special education teacher, who is a person with substantial skill, a person who could easily move around. The ability to handle the cost of special education are more onerous than those in regular education.

When you do provide the aid of \$35 million in 1975, do you then distribute that on a different basis depending on the handicapped or is there a figure that is available for all handicapped?

Mr. MORSIK. We do break it up. We have a number of program areas. We have a category called severally handicapped. That presently receives up to \$1,000 over and above the local share. Then we have a different formula for the mentally retarded. We have a different allotment for speech and hearing therapy services, home and hospital instruction. Then we support a number of children in public facilities both in State and out of State. We have what we call the excess costs, which pays for a child to go to a public facility. Those costs are running this year up as high as \$17,000 at a cost to the State of \$1,800,000. That is all part of that \$35 million.

Mr. QUIE. Are those decisions made in the department or is that part of the basic law?

Mr. MORSIK. In the department.

Mr. LEE. Dr. Morsik answers correctly as of today. The General Assembly is becoming very restive about those \$15,000, \$17,000 per year costs per pupil. There is legislation pending at Annapolis which will put us at a limit of \$6,500 per year.

Mr. QUIE. If they change it, what are you going to do with the children now benefiting from the higher amount?

Mr. LEE. That is a good question.

Mr. QUIE. Thank you.

Mr. BRADENAS. Mr. Mazzoli?

Mr. MAZZOLI. I commend Mr. Lee for his work in this area. This is an important area for legislation on the Federal level and I am sure through your leadership, the State of Maryland has made a particular effort in this regard. I hope this committee, on hearing your testimony and others interested in it, will be able to come up with a bill that will not scare the pants off anybody, but at the same time you do not have the facilities or the wherewithal to do what is necessary at the State level.

Thank you for your statement.

Mr. BRADENAS. Mr. Eshleman?

Mr. ESHLEMAN. I am from Pennsylvania and we use some revenue sharing money for education of the handicapped. Has the State of Maryland considered the same thing?

Mr. LEE. Our revenue sharing money goes into the general pot and I think under some provisions of the law we have to identify where it goes, but as a practical matter, I could answer it either way, to be truthful.

Mr. ESHLEMAN. Well, I am not trying to embarrass you at all, but you made the statement "in the pot." I would like you to further define that statement. One definition I can think of is in lieu of raising Maryland taxes. That is one definition I can place on putting it in the pot.

I realize all States have more needs than the amount of revenue sharing, as long as you are using it for the needs. Is that what you mean by "in the pot"?

Mr. LEE. It seems to me, no matter where any State is spending it, it is for doing something that State was bound by duty, conscience, and responsibility to do anyway. Federal revenue sharing would be in lieu of raising additional State taxes.

Mr. ESHLEMAN. Maybe Dr. Mopsik can answer this next question. You said you had about 12.5 percent handicapped children. You must have some estimate of excess costs. I happen to think one of our biggest problems with this legislation when it comes to markup time is going to be excess costs. What is the excess costs, and I realize it must be an estimate.

Mr. MORSIK. Two to three times more for a severely handicapped child, 200 to 300 percent.

Mr. ESHLEMAN. What is the total cost per child in the Maryland schools?

Mr. MORSIK. This year over \$1,000 per child.

Mr. ESHLEMAN. Well, then I agree with the point you made as to the maintenance of efforts. That is going to be one of our toughest jobs.

Pennsylvania gave us figures last week which showed about a \$200 difference and I questioned at the time, I thought that was very low. Now, you are saying in effect \$2,000 to \$3,000 difference. So our definition of maintenance of effort is going to be very important in this legislation. The same yardstick is going to have to be applied to every State because here are two States which have entirely different yardsticks. That is all.

Mr. BRADENAS. I just have one other question, Governor, which follows from what Mr. Eshleman has been asking you about. Some States, I understand, are experiencing surpluses. The administration will later testify on States that for fiscal 1975 the States will have excesses in the order of \$19 billion to \$20 billion. Is Maryland in such a situation? If so, why does not Maryland use such surplus funds for the education of the handicapped?

Mr. LEE. Maryland has a \$2.7 billion budget for this next fiscal year. That includes everything. The total general fund budget is \$1.4 billion. The legislature right now is in the process of making cuts from the original budget as submitted and the Governor has already submitted his supplemental budget. He sent his supplemental budget down to the general assembly last week and it showed for the whole budget an estimated surplus as of June 30, 1975, of \$11,644.

Mr. BRADENAS. So as far as Maryland is concerned, your State is not contributing very much to that projected \$19 billion to \$20 billion surplus on the part of all the States?

Mr. LEE. I am afraid we are not helping that total any.

Mr. BRADEMANS. We have with us today from the State of Maryland the Honorable Clarence Long. We would be glad to hear from you, if you have anything to add.

**STATEMENT OF HON. CLARENCE D. LONG, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MARYLAND**

Mr. LONG. I just came here to give a very short message to this very distinguished Select Subcommittee on Education. I have known Blair Lee for a great number of years. He is a very distinguished elected official in Maryland. He is very highly respected in the State. I would certainly hope this committee would give great weight to his message.

I certainly have been concerned for many years about the problem of helping children in special education for the handicapped. Many would be disadvantaged even if they were not physically or mentally handicapped. But few things tear your heart more than seeing children put off in a corner of a classroom. You just know the parents know they are never going anywhere and they worry themselves sick as to what is going to happen when they are gone. These children have no protection.

I see this problem when many parents come to me. I don't have very many poor people in my district. These are people in the middle-income range. It is an acute problem for them, so you can imagine what it is for the really poor.

On the whole question of who should pay for the revenue-sharing or categorical grants. I might point out I voted against revenue sharing because I predicted quite rightly—that revenue sharing was going to end up in tax cuts, and it is not the fault of the Governor. That is where the pressure is and we have to face the realities of life. The money is spent on a lot of silly projects and I would hate to see those children sitting in a classroom neglected year after year because the State and Federal Government were having some disagreement.

What we have in the budget is a very small amount of money. You can multiply it by 10 and it would not come close to alleviating the problem.

Mr. BRADEMANS. Thank you very much, Mr. Long, Mr. Lee, and Mr. Mopsik.

Next, the subcommittee will hear from the members of a panel of State directors, coordinators of programs for the mentally retarded. There are six witnesses. Will you please come forward and introduce yourselves.

I am going to suggest that each time you speak it will be helpful if you will indicate what your last name is in order that the reporter can identify you. Second, if you would, be kind enough to try to summarize any statements.

Go ahead, Mr. Nash?

STATEMENT OF HERBERT D. NASH, DIRECTOR, SPECIAL EDUCATION PROGRAM, GEORGIA STATE DEPARTMENT OF EDUCATION, AND PRESIDENT, NATIONAL ASSOCIATION OF STATE DIRECTORS OF SPECIAL EDUCATION, ACCOMPANIED BY JOHN C. GROOS, DIRECTOR, SPECIAL EDUCATION SECTION, MINNESOTA STATE DEPARTMENT OF EDUCATION; JAMES MICKLEM, DIRECTOR, SPECIAL EDUCATION, VIRGINIA STATE DEPARTMENT OF EDUCATION; EARL B. ANDERSEN, EXECUTIVE DIRECTOR, NATIONAL ASSOCIATION OF STATE DIRECTORS OF SPECIAL EDUCATION, WASHINGTON, D.C.; ALSO STATEMENTS OF SAMUEL ORNSTEIN, ASSOCIATE COMMISSIONER FOR MENTAL RETARDATION, STATE OF NEW YORK; GARETH THORNE, DEPUTY COMMISSIONER OF HEALTH, OFFICE OF MENTAL RETARDATION, HARTFORD, CONN.; AND RICHARD SCHEERENBERGER, SUPERINTENDENT OF THE CENTRAL WISCONSIN COLONY AND TRAINING SCHOOL, MADISON, WIS.

Mr. NASH. I am Herbert Nash, director, special education program, Georgia State Department of Education.

With me is John Groos, director, special education section, Minnesota State Department of Education; Mr. James Micklem, director of special education, Virginia; Earl B. Andersen, executive director, National Association of State Directors of Special Education, Washington, D.C. Also at the table are Samuel Ornstein, associate commissioner for the mentally retarded, State of New York; Gareth Thorne, deputy commissioner of health, Office of Mental Retardation, Hartford, Conn.; and Richard Scheerenberger, superintendent of the Central Wisconsin Colony and Training School, Madison, Wis.

On behalf of colleagues here with me today and State directors from the several States, I express to you and members of the Select Subcommittee on Education our appreciation for the opportunity to testify in support of H.R. 70.

It is the collective view of State directors of special education that the stated purposes are relevant to nationally defined needs. The general provisions of the Education for Handicapped Children Act incorporate features from which planning strategies can be more fully developed; gains made can be further consolidated; instructional programs strengthened and services delivery systems extended. As we see it, H.R. 70 will clearly assist the States to fulfill the current USOE commitment of full services and appropriate education for all handicapped by 1980.

This bill recognizes the vast array of problems and issues impacting on the education of handicapped persons. Despite nearly a quarter century of continuing effort, the full services goal remains elusive, presently about 4 million of the Nation's estimated 7 million exceptional children and youth are not being appropriately served. H.R.

70, perhaps for the first time, may provide the means by which this gap can be closed.

The association is pleased to note that H.R. 70 eligibility requirements are comprehensive. State directors will, we believe, welcome and support those aspects of the bill which place emphasis on the unification of all special education programs and services within the State Education Agency. This will enhance efficiency, administrative effectiveness and the quality of the Federal-State interface.

We view the comprehensive State plan component as a positive and viable accountability factor. We are particularly impressed that H.R. 70 provides for linkages with existing instructional and supportive service systems and assures due process procedures for every exceptional child affected by the bill.

Mr. Chairman, the National Association of State Directors of Special Education has some concerns in regard to certain aspects and provisions of this act.

First, parity has not been a reality with existing Federal programs. It is our hope that some funding alternatives can be developed which will enable H.R. 70 formulas to achieve equitable funding for the several States and extra-State jurisdictions. We are particularly concerned about the viability of the \$800 figure in section 3(5). We would ask, is this realistic for all of the States? Would such an amount actually make it possible to achieve the goals and purposes of the act?

Second, recurrent problems with the funding provisions of current Federal legislation, for example, irregular flow of money, reallocation of moneys intended for special programs and services, and, of course, impoundments have seriously affected maintenance of effort and future planning of special education programs. H.R. 70 should guard against such practices in the future.

Third, State directors share a mutual concern about the survival and continuing support of existing authorizations which are a function of the provisions delineated by such laws as Public Law 91-230, Public Law 93-412, Public Law 93-313, and other Federal and State laws providing for the maintenance of existing programs and services. It is our hope that States will not receive less Federal funding support for special education under the provisions of H.R. 70 than they are now receiving. It is our recommendation that a suitable save-harmless clause be included in the bill.

Fourth, we are critically aware of the comprehensive supportive service effort needed to provide appropriate, individualized education for each exceptional child, young person, and adult. These support services should be included in the excess cost definitions by the several States.

With this in mind, we note that the "definitions" section may assume that supportive services are adequately and equitably covered by such terms as average per pupil costs, average per pupil expenditure, aggregate current expenditures, excess cost, and so forth.

In all due respect, Mr. Chairman, such is not the case. A recent State-by-State survey of these supportive service costs and expenditures show wide variability. In most cases costs of this type appear to be a function of urban and rural geographic distribution patterns, differing levels of understanding on the part of legislative bodies and other governmental units, variable transportation costs, and the quantity and quality of manpower. All of these factors, and more, impact on the development, implementation, and evaluation of an "approved" State plan, which is based on the concept of excess cost.

We, therefore, recommend that you define these supportive services in the definitions section and subsequently allow the States to include them in their excess-cost computations. Thus, State education agencies would be encouraged to deliver full services.

We commend the leadership that this bill represents. We applaud its recognition of the learning needs, potentials, and rights of exceptional children, young people, and adults.

We hope the bill is given the full attention of the select subcommittee and that it moves toward rapid passage by the Congress.

Mr. Chairman, two of my colleagues have prepared statements.

Mr. BRADY MAS. Without objection, those statements will be included in the record.

[The statements referred to follow:]

#### FINANCING EDUCATIONAL PROGRAMS FOR HANDICAPPED CHILDREN

(By Richard A. Rossmiller\*)

Americans have always paid their respects to the goal of equality of educational opportunity. Too frequently, however, their tribute has been little more than lip service. The upheavals of the post-Sputnik years have demonstrated clearly that equality of educational opportunity has been much more a myth than a reality. During the late 1950's Sputnik focused attention on our failure to provide adequately for education of the gifted; in the early 1960's we became aware of the educational problems of the poor and compensatory education became the watchword; and more recently, those who feel they are being denied educational equality have turned to the courts and nearly every state now has its own version of the Serrano case.

Handicapped children are among the groups who consistently have been denied equality of educational opportunity. They too often have been discouraged from attending the public schools or even excluded from them. Educational programs for handicapped children were practically unknown prior to the present century and even today, many handicapped children are not being provided with educational programs designed to meet their needs. As evidence of the inadequacies of present educational programs for handicapped children, one needs look no further than the legal arena. Parents and others who are concerned about the education of handicapped children have increasingly turned to the courts for help. In *Mills vs. Board of Education*,<sup>1</sup> for example, it was ruled that failure to provide exceptional children a free and suitable publicly

<sup>1</sup> *Mills v. Board of Education of District of Columbia*, 384 F. Supp. 886 (D.D.C. 1972).

\*The author is Professor of Educational Administration and Director of the Wisconsin Research and Development Center for Cognitive Learning at the University of Wisconsin-Madison.

supported education cannot be excused by the claim that there are insufficient funds. A number of court cases have affirmed the right of every child, whether normal or handicapped, to obtain an appropriate education in the public schools.<sup>2</sup>

The question, "What constitutes equality of educational opportunity?" has long been debated. I prefer to think of equality of educational opportunity in terms of access to resources. Using this approach, equality of educational opportunity will exist when every individual is assured of free and equal access to those educational programs which will enable him to develop to the fullest his innate talents, skills and abilities.

This definition does not require that an equal number of dollars be spent for the education of each pupil as is sought by some reformers. We have known for a long time that not all educational programs are equally costly and for very good reasons. The cost of an identical educational program will vary from region to region simply because economic factors such as living costs vary from one place to another. More importantly, children are remarkably variable. Each child is a unique individual with unique attributes. Some children are gifted with particular ability and talent which deserves special attention; other less fortunate children are handicapped in ways which also deserve special attention.

My definition of equality of educational opportunity does not assume that every child will attain the same level of mastery in all aspects of learning. Although there is growing evidence that a vast majority of children can master basic skills if they are given appropriate instruction and sufficient time, it is also clear that some children, such as the mentally handicapped, are not likely to ever master certain skills. And most of us who play golf soon recognize that our mastery of the motor skills involved will never reach the level demonstrated by Jack Nicklaus. Those who want to define equality of educational opportunity as equal mastery of knowledge or skills (for example, by scores on a standardized test) are doomed to frustration—at least at the present state of the educational art.

Provision of equal access to appropriate educational programs is an attainable goal. Such a definition of equality of educational opportunity recognizes the need for program diversity to meet the unique needs of learners and it does not impose standards of performance which are impossible to attain. Thus, it is an appropriate goal to guide the development of programs for financing the education of handicapped children.

#### THE STATE'S RESPONSIBILITY

The fact that education in the United States is primarily the responsibility of the individual states is firmly established. Although the federal government has a legitimate interest in education because it is responsible for the general welfare of the people, it has no constitutional authority to control education. This authority rests with the individual states. Although most states have delegated to local educational agencies considerable responsibility for the day-to-day operation of schools, the ultimate responsibility for providing public education remains with the state. If children are denied equality of educational opportunity by existing finance plans, or by patterns of school district organization, it is the state which is at fault. These state created local school districts and established finance plans and has both the authority and responsibility to change them.

#### THE HANDICAPPED CHILD

Before discussing the financing of educational programs for the handicapped, we should define a handicapped (or "exceptional") child. Kirk's definition is most useful.

"The exceptional child is . . . that child who deviates from the average or normal child in mental, physical, or social characteristics to such an extent that he requires a modification of school practices, or special educational services, in order to develop to his maximum capacity."<sup>3</sup>

It is also important to know how many children are handicapped, since this information is vital to proper planning. Table 1 contains two estimates of the incidence of handicapping conditions in the United States.

<sup>2</sup> See, for example, *Pennsylvania Association of Retarded Children vs. Commonwealth of Pennsylvania*, 344 F. Supp. 1257 (E.D. Pa. 1971) and *Lehman vs. Spears*, 4 F. Supp. 100 (E.D. La. 1973).

<sup>3</sup> Samuel A. Kirk, *Education of Exceptional Children* (Boston: Houghton Mifflin, 1962), pp. 1-5.

TABLE 1—ESTIMATES OF THE INCIDENCE OF VARIOUS HANDICAPPING CONDITIONS IN THE UNITED STATES

[In percent]

	Estimates of incidence	
	All estimates <sup>1</sup>	Current estimates <sup>2</sup>
Educable mentally retarded .....	2 00	2 67
Trainable mentally retarded .....	( <sup>3</sup> )	18
Severely mentally retarded .....	( <sup>3</sup> )	.15
Learning disabilities .....	( <sup>3</sup> )	2 50
Emotionally disturbed .....	2 00	2 00
Speech handicapped .....	2 00	3 50
Blind .....	20	62
Partially sighted .....		20
Deaf .....	1 50	.07
Hard of hearing .....		50
Crippled and other health impaired .....	1 50	50
Multihandicapped .....	( <sup>3</sup> )	06
Total .....	9 20	12 35

<sup>1</sup> Estimates by Rowaine P. Mackie and Lloyd M. Davis, College and University for the Preparation of Teachers of Exceptional Children, USOE Bulletin No. 13, Government Printing Office, 1954.

<sup>2</sup> Current estimates by Bureau of Education for the Handicapped, U.S. Office of Education.

<sup>3</sup> No estimate

The estimates in Column 1 were published in 1954; those in Column 2 are currently used by the Bureau of Education for the Handicapped, U.S. Office of Education. Several refinements in program categories are evident, as are changes in estimated incidence rates. The mentally retarded category has been subdivided into three groups and the overall incidence has increased from 2.0 percent to 3.0 percent. The category "learning disabilities" has been added with an estimated incidence of 2.0 percent. The incidence of speech handicapped children has increased from 2.0 percent to 3.5 percent. The categories "blind" and "deaf" have been divided to identify the partially sighted and the hard of hearing and the incidence of these two conditions has been reduced by nearly 1 percent. The estimated incidence of crippling has been reduced from 1.5 percent to .05 percent and a category for multi-handicapped has been added. In total, the estimated incidence of handicapping conditions has increased by over 3 percent. This increase, however, is more the result of improved identification procedures and the development of special differentiated educational programs than of a real increase in the incidence of handicapping conditions over the past 20 years.

It should also be noted that not all handicapped children require special educational programs. Many handicapped children, for example, crippled children and emotionally disturbed children, do not need extensive special programming throughout their school years. Early identification and treatment often can overcome the educational disadvantages associated with a handicap and reduce or eliminate the need for special educational programming. It also should be noted that the intensity of special educational programming will vary within each category depending upon the severity of the handicap and the needs of the individual child.

#### VARIATIONS IN SPECIAL EDUCATIONAL PROGRAMMING

Within each category of the handicapped several program options are necessary both to deal with the specific needs of the child and to achieve maximum efficiency in delivering the needed educational services. The range of delivery systems for providing special educational programs was examined at a recent conference sponsored by the Council for Exceptional Children and nine program models were identified:<sup>4</sup>

- 1 Regular classroom with special consultation to the regular teacher.
- 2 Regular classroom supplemented by an itinerant teacher.
- 3 Regular classroom supplemented by a resource teacher.
- 4 Part-time special education (i.e., student spends most of his time in special classes, but joins other students for certain activities).

<sup>4</sup> Graeme M. Taylor, "The Special Costs of Special Education," 1973. (Mimeo)



5. Full-time special education (i.e., self-contained special class)
6. Special day school
7. Homebound instruction.
8. Residential school.
9. Hospital

The first three delivery systems provide special educational services to *supplement* the regular educational program. That is, the handicapped child participates in the regular school program and receives additional help as needed depending upon the nature of the handicap. The additional help ranges from providing consultation and advice to the child's regular teacher in option 1 to providing a room and special teacher within the building where the handicapped child can go for additional help or to obtain special instructional materials under option 3.

In the delivery systems covered under options 4 and 5, the child receives special educational services as a *substitute* for the regular educational program. The child is placed in a special classroom within the regular school building in both models. In option 4 the child joins children in the regular school program for certain activities such as music, art, or physical education. In option 5 the child's entire educational program is provided within a self-contained special classroom.

The programs provided under options 6-9 are provided outside of the regular school building in special schools for the handicapped (option 6); through home instruction (option 7); through placement of the child in a residential school for the handicapped (option 8); or through instruction in a hospital to which the child is confined (option 9).

It should be evident that the "intensity" (as well as the cost) of special programs for the handicapped increases within this continuum of special program options. Option 1, for example, is much less intensive than option 5 and will be considerably less costly. Option 1 may provide adequately for the special educational needs of a mildly handicapped child or for a child who has been able to compensate for his handicap--a partially sighted or hard-of-hearing child, for example. Option 5 or option 6 may be needed, however, to meet the special educational needs of a severely handicapped child.

Three points should be emphasized with regard to these special program options:

1. Within each category of the handicapped, the degree of handicapping varies from mild to very severe with attendant implications for educational programming. Stated another way, not every blind child needs the same special educational program. The program models discussed help plan a special educational program for each child based on his or her specific handicaps.

2. A child should not be "locked in" to any one program option. If a program works, i.e. if it is effective, many children will need less intensive programs as they learn to compensate for their handicap. Provision for systematic reassessment of children is essential. To leave a child in a self-contained special classroom when that child is capable of making satisfactory progress in a regular classroom if given appropriate additional help is costly and inefficient, to say nothing of the noneconomic costs to the child's self-image and sense of personal worth.

3. Other things being equal, a child should be placed in the least costly program which will permit him to make satisfactory educational progress. Regular class placement is always preferable to special class or special school placement solely on the basis that greater efficiency can be achieved in the use of resources if a child can make satisfactory educational progress in a regular class.

#### *Organizational problems in special programming*

Existing patterns of school organization in some states make it difficult, and in some cases impossible, to achieve efficiency in delivering special educational services. Many local educational agencies are too small to provide even one program for each category of handicapped children--let alone the array of program options discussed in the preceding section. If delivery of special educational services is left solely to local educational agencies, many handicapped children will be served poorly or not at all and few handicapped children will be served efficiently.

State provisions for financing special educational programs for handicapped children certainly should not reward the continued use of inefficient or outmoded delivery systems. Rather, they should encourage creative approaches to the problem of delivering special educational services. Existing local educational agencies

need not be completely dismantled, but they should be encouraged to work co-operatively through a consortium of local districts or through intermediate agencies to develop efficient delivery systems. Nearly all local education agencies can provide services through options 1, 2 and perhaps 3, but many of them will be hard pressed to provide services under options 4, 5 and 6. However, a group of local school districts could band together and provide services under options 4, 5, and 6 with one district providing a special class program for the blind, another a special class program for the severely mentally retarded, etc. Intermediate educational agencies (such as the Boards of Cooperative Educational Services in the State of New York) could assume responsibility for providing some or all of the educational programs for handicapped children in a given area. In any event, existing patterns of school district organization should not be permitted to impede the development of arrangements for delivering educational services which will insure that (1) every handicapped child has free access to an educational program which is appropriate to his or her needs and (2) which is provided in the most efficient way possible.

#### PRESENT PROGRAMS FOR FINANCING SPECIAL EDUCATION

The problems of financing of educational programs for handicapped children received very little attention until recent years. A study undertaken by the Council for Exceptional Children (CEC) in the late 1960's provided the most comprehensive review of state provisions for financing educational programs for handicapped children. The results of the study were summarized as follows:

\*\*\* most states have some form of reimbursement to local school districts for efforts for handicapped children beyond the general school reimbursement \*\*\* We might group the reimbursement formulae in two overall categories: unit formulae and per pupil formulae.

An example of a pure unit support program is the state of Alabama which provides one unit (which in this case is the minimum foundation support level for a teacher) for each class of special education students. Florida's special education laws are somewhat similar to those of Alabama. Florida, also operating on a unit basis, allows one unit to be granted for every ten exceptional children in special classes, one unit for every ten preschool children, as well as varying units to meet transportation costs. Unit systems such as those described above are most common in states operating under minimum foundation programs. Unit formulae place great fiscal authority in the hands of state boards of education and state legislatures, since the units must be appropriated in order to have any level of state financial assistance.

A second type of unit formulae we might call the percentage reimbursement. A good example of this type of law is Virginia's which provides that the state assumes 60% of the cost of teachers salaries at the state minimum salary level, 60% of the hourly rate of visiting teachers, and 100% of the cost for staff serving children in hospitals. Another type of percentage reimbursement might be called the 100% reimbursement or full support program. An example of this can be found in South Dakota where the state provides 100% of the approved amount for the program. Such financial reimbursement formulae can be misleading, since, due to low levels of state appropriations, as well as rapid rates of program growth, financing may be well below the 100% figure.

"The second general category of reimbursement is the per pupil reimbursement. Under this system there are three basic patterns with variations:

"First, there is the system which might be labeled the 'straight sum reimbursement,' as typified by the State of Arizona, which provides, in addition to the general state per pupil reimbursement, \$600 for each trainable mentally retarded child, and \$200 for all other types of handicapped children.

"A second type of per pupil reimbursement is the excess cost formula. Under this system, the district first determines a per pupil cost of instruction, then subtracts from this cost the cost of educating a non-exceptional child in the same district. Once the excess cost figure is obtained, there are several variations on reimbursement. The first is exemplified by the State of Pennsylvania which places no limit on the excess cost. Tennessee represents a second type of formula in that the law places specific limitations (\$300) on the amount that the state may reimburse. A third variation is found in Michigan where the state reimburses a percentage of the excess cost, depending upon the amount appropriated by the legislature.

"The third type of per pupil reimbursement is the weighted formula. An example of this is New Mexico's law which uses a multiplier in determining the

reimbursement for handicapped children. The State of Mississippi uses a somewhat similar approach on a unit basis by providing additional teacher units for special classes."

The results of a recent study indicate that there has been little change in state finance programs since the study by the Council for Exceptional Children. Thomas was able to place state programs for financing special education into six categories corresponding to those identified in the CEC study with the exception that an additional category, reimbursement for personnel, was identified.<sup>4</sup>

#### *Toward Improved Programs for Financing Special Education.*

Most people realize that special educational programs for handicapped children are more costly per pupil served than are regular educational programs. Until recently, however, the amount of additional cost entailed in providing special educational programs for the handicapped was largely a matter of conjecture. The pioneering research conducted by the National Educational Finance Project established some benchmarks in this area and has focused considerable attention on the "extra" costs involved in various types of special educational programs.<sup>5</sup>

It is certain that the provisions made by a state for financing special educational programs will largely determine the nature, scope and efficiency of the delivery systems which develop. A state through its financing provisions can either encourage or stifle the development of efficient delivery systems and can either insure that every handicapped child has access to an appropriate special educational program or that many handicapped children will effectively be denied access to such programs. To develop financing provisions which will achieve the twin objectives of assuring equal access to programs and achieving maximum efficiency in the use of resources will require much more data than we presently have concerning the number of handicapped children to be served, the extent to which they are now being served, the array of program options which exist and their distribution within the state, the cost of the existing programs, and (hopefully) the efficiency and cost-effectiveness of the existing programs.

#### *Identifying the population to be served*

The first necessary step in providing adequately for the educational needs of handicapped children is to find out how many children are handicapped, the nature and severity of their handicaps, and where in the state these children reside. It is unfortunate that procedures for identifying handicapped children leave a great deal to be desired in most states because early identification and timely treatment is crucial. The handicapping effects of defective vision or hearing, for example, can frequently be reduced if a child is identified early and given training which will help him learn to use other senses to acquire information that normally would be gained through the defective sensory channel.

The task of identifying handicapped children cannot be done by the schools alone. A cooperative venture involving members of the medical profession, public health agencies, welfare agencies and the like will be needed. Not only must information be gathered, it must be updated regularly or normal population mobility will soon make it obsolete. Although the task is not simple, it is impossible for a state to plan adequately to meet the educational needs of handicapped children unless their whereabouts is known and the nature of their handicap has been determined. Unless data are available on the number of handicapped children who need special educational programs, it is impossible to determine the fiscal requirements of alternative financing arrangements.

#### *Availability of programs*

A second requirement for sound fiscal planning is knowledge concerning what programs and program options are currently available throughout the state. Such data are likely to reveal that some areas of the state are well served and other areas are poorly served. Even in areas which appear to be well served, however, program options may be limited in number, and children with some types of handicaps may not be well served. In areas which are poorly served the reasons for the lack of service must be sought. Existing patterns of school district organization may need to be altered, greater cooperation among districts may need to be encouraged, or intermediate agencies may need to be established.

<sup>4</sup> Council for Exceptional Children, "Summary of Analysis of State Special Education Finance Laws," 1968 (Miami).

<sup>5</sup> Sister Marie Angela Thomas, "Finance: Without Which There Is No Special Education," *Exceptional Children* (March 1973), pp. 475-480.

<sup>6</sup> R. L. Johns, et al., *Alternative Programs for Financing Education*, NEFP, Vol. 5 (Gainesville, Florida: National Educational Finance Project, 1971).

If the school district in which a handicapped child resides cannot provide an appropriate and efficient special educational program for that child, alternative arrangements should be considered.

#### *Determining program cost*

The problems involved in determining the cost of existing special education programs are difficult to define. A basic source of difficulty lies in the fact that school accounting systems have traditionally been designed primarily to safeguard public funds—to insure that they are expended properly and that they are not misappropriated or stolen. Providing information concerning the amount of funds expended for various educational programs or program options has until recently not been a matter of concern. Consequently, in most school systems it is extremely difficult to obtain accurate data concerning expenditures in educational programs for handicapped pupils.

It is imperative that data be obtained concerning the cost of various programs if any meaningful estimates of the fiscal requirements of various alternatives are to be developed. Furthermore, the cost of the various programs should be expressed on a common base to facilitate comparisons. The cost index approach developed by the National Educational Finance Project provides such a common denominator. In the cost index approach, all special program costs are compared with the cost of a defined base program—for example, the cost per pupil of the regular school program for pupils in grades 1-6. A cost index is neither time-bound nor place-bound and permits costs to be compared across programs and among districts. Cost indexes may be determined in either of two ways: (1) empirical studies using actual school system data and (2) theoretical studies utilizing the judgment of recognized authorities to determine the delivery systems and cost factors which would characterize an "ideal" system.

#### *Empirical studies*

The cost indices and cost differentials identified by the National Educational Finance Project were based on empirical studies using data from actual school districts. Several additional studies conducted during the past year have utilized data from actual school systems to develop cost indices for individual states. The methodology employed in these studies has been discussed in detail elsewhere<sup>1</sup> and will only be summarized here.

1. Identify the educational program structure for which data are to be obtained in sufficient detail to identify meaningful distinctions between programs.
2. Identify alternative delivery systems which may be employed to provide the programs under consideration.
3. Select a representative sample of school districts which provide the educational programs being studied.
4. Collect the necessary data and compute cost differentials and cost indices by:
  - (a) obtaining the full-time equivalent enrollment in each educational program in each school district,
  - (b) determining the current expenditure for each educational program in each school district,
  - (c) dividing the total cost of each program by the number of full-time equivalent students in the program,
  - (d) calculating the difference between the cost per pupil of the base program and the cost per pupil of the special program (the cost differential), and
  - (e) dividing the cost per pupil of the special program by the cost per pupil of the base program—the cost index.

The cost indices obtained from the National Educational Finance Project research and from studies conducted in several states are shown in Table 2. It should be noted that caution is required when comparing these cost indices. The requirements for placement in the various special education program categories vary from one state to another, as do requirements for teacher certification, class size, and a host of other factors which are likely to influence the cost of a given program. The data contained in Table 2, however, do provide useful estimates of the relative cost of educating children who have physical, mental, or emotional handicaps.

<sup>1</sup> Richard A. Rossmiller and Thomas H. Moran, "Cost Differentials and Cost Indices: The Assessment of Variations in Educational Program Costs" (To be published in the Proceedings of the 15th National Conference on School Finance, forthcoming).

The first column in Table 2 (headed NEFP) lists the cost indices obtained in the research conducted for the National Educational Finance Project. These indices were based on the cost of the regular educational program provided for pupils in grades 1-12 in each district and made no differentiation between the cost of elementary and secondary school programs. The indices for Kentucky, Delaware and South Dakota were obtained from studies conducted in each of these states using the same general techniques and procedures that were used in the original National Educational Finance Project study. In the case of the state studies, however, data were subdivided according to elementary and secondary school programs. The cost indices obtained for Kentucky were based on a study involving 28 representative school districts; the Delaware study included all school districts in Delaware; and the South Dakota study included 13 of the largest school districts in South Dakota. The indices reported for Indiana are obtained from a study conducted for Texas by the staff of the National Educational Finance Project. The Texas study did not deal with each program in detail; hence data are reported only for all elementary and all secondary school programs with the exception of the program for speech handicapped pupils.

TABLE 2 — COST INDEXES FOR EDUCATIONAL PROGRAMS FOR HANDICAPPED CHILDREN

Program study	NEFP <sup>1</sup>	Kentucky <sup>2</sup>	Delaware <sup>2</sup>	Indiana	Texas	South Dakota
Elementary programs		1.76	1.71	1.48	2.21	2.57
Gifted	1.13	1.88				
Educable mentally retarded	1.92	1.68	1.49	2.03		2.43
Trainable mentally retarded	2.20	1.73	1.67	2.04		2.92
Learning disabilities	2.50	1.52	2.29	1.50		2.47
Emotionally disturbed	3.70	1.60	1.92			3.36
Speech handicapped	1.25	1.62		1.22	1.36	
Blind	3.48		1.83			
Partially sighted	3.48	1.79	1.83			
Deaf	3.15	1.65	3.03	1.55		
Hard of hearing	3.15	1.62	3.03			
Orthopedically handicapped	3.26	1.54	1.76	4.18		3.94
Multiple handicapped	2.80	.65				
Secondary programs		1.80	1.51		2.29	2.41
Gifted	1.13	1.49				
Educable mentally retarded	1.92	1.49	1.35			1.72
Trainable mentally retarded	2.20	1.48	1.24			1.69
Learning disabilities	2.50		2.24			
Emotionally disturbed	3.70	1.35	1.95			3.96
Speech handicapped	1.25	1.91			1.29	
Blind	3.48		2.48			
Partially sighted	3.48	1.70	2.48			
Deaf	3.15	1.22	3.05			
Hard of hearing	3.15	1.25	3.05			
Orthopedically handicapped	3.26		1.29			12.04
Multiple handicapped	2.80					
Occupational programs	1.80	1.55	1.60			
Preschool programs: Kindergarten	1.30	1.05		1.03	1.05	

<sup>1</sup> Elementary and secondary levels were not distinguished, the base cost was 1.12 inclusive.

<sup>2</sup> Base cost for the secondary special programs was the secondary regular program.

### Theoretical studies

A theoretical approach to identify the "excess" cost of educating handicapped children was employed at a recent conference sponsored by the Council for Exceptional Children.<sup>3</sup> The methodology used was as follows:

1. Define a set of program delivery systems, or optional ways of providing services to handicapped children.
2. Establish incidence figures (percentages of school age children) for each handicapping condition.
3. Using a sample school district (either real or hypothetical), calculate the number of children with each handicapping condition who could be expected to reside in the district.
4. For each type of handicap, determine what percentage of children with that handicap could best be served by each delivery option (a) at the present time and (b) ideally.
5. Determine the number of children with each type of handicap who would be served by each delivery system option (by applying the percentage

<sup>3</sup>Taylor, *op cit*.

from Step 4 to the number of children in each category of handicap from Step 3).

6. Establish the appropriate ratio of professional personnel to children for each delivery system model and type of handicap served both (a) at the present time and (b) ideally.

7. Compute the cost for each delivery system option and type of handicap.

8. Compare the "standard" costs from Step 7 with the costs of serving non-handicapped children in the school district to determine the "excess" costs of serving handicapped children.

Using the above methodology, the incidence estimates shown in Column 2 of Table 1, the delivery system options discussed earlier in this paper, and the data from a midwestern county which included large city, suburban and rural areas, it was found that the average per pupil cost for special education was 2.4 times the average per pupil cost of regular education if present practice is assumed, and that the ratio is 2.1 if optional practice is assumed. These cost indexes are somewhat higher than those which have been found in the empirical studies of program costs.

#### *Some limitations of cost indices*

Cost indices are especially useful for statewide planning. The availability of accurate cost indices for a state should permit school officials and legislators to make much more accurate estimates of the amount of revenue needed to provide adequately for the special educational needs of handicapped pupils.

One limitation of cost indices arises from the fact that a cost index generally is expressed as either a statewide average or a median. Half of the school districts in a state will be spending more than the statewide average and the remaining half of them will be spending less than the average. It should be obvious that using the average cost of all special educational programs in the state as a basis for allocating funds to individual districts is no guarantee that adequate provision will be made for the special educational needs of pupils in these districts. And using the average cost for a particular special educational program statewide as a basis for allocating funds confronts the same problem. Provision must be made in any financing program to deal adequately with the fiscal needs of individual districts which deviate from the state average for good and sufficient reasons.

A second limitation of cost indices resides in the fact that they reflect current educational practice. That is, they reflect neither the efficacy nor the efficiency of an educational program. They reflect only what is currently being done, not what could be done (or should be done) in the way of educational programming for specific pupils. A cost index for a given district may be high because the district is not using its resources efficiently. On the other hand, a high cost index for a particular educational program may be unavoidable in some districts for reasons such as unusual transportation costs or a limited number of eligible pupils. Either of these two factors, as well as several other factors, could increase the per pupil cost of the program and thus increase the cost index. A program for financing education for handicapped pupils must be flexible enough to accommodate necessary differences in expenditure from one district to another, and at the same time avoid subsidizing inefficiency in the provision of educational services.

A third limitation of cost indices is closely related to the second. Cost indices show the relative cost of educating pupils in special programs compared with the cost of educating pupils in regular programs. They do not provide information as to how wisely or how efficiently funds are being expended for either regular or special educational programs. It is possible that a given special educational program could be offered to an equal number of students, could provide the same educational services, and could cost the same amount per pupil in two school districts but the cost indexes in the two districts could differ because of differences in the cost of the regular program in each district. Since a cost index provides no information about the efficiency and effectiveness of the regular school program, a low cost index may mask an inefficient regular school program which has an unnecessarily high cost per pupil. The opposite could also be true: if a district is spending at a low rate for pupils in its regular program, the cost index for special programs will be higher.

A fourth limitation of cost indices can arise if the relative cost of the various delivery systems is not considered when developing the cost index. There is ample evidence that special classes or special schools for handicapped children are more costly delivery systems than are those which provide supportive services

to handicapped pupils who are enrolled in regular programs. A cost index which lumps together all programs for educating a particular category of handicapped children without regard to the way in which educational services are delivered to such children will mask a great deal of cost variation within these programs.

Finally, it should be noted that, for a variety of reasons, costs will vary between districts for identical programs. In some districts, for example, the cost of transporting pupils involved in special programs will be much greater than in other districts. Another very important factor in determining the relative cost of educational programs is the pupil teacher ratio. Some districts will have too few pupils to operate a program at maximum efficiency, but pupils who live in these districts certainly should not be denied access to the educational programs they need simply because there are not enough of them to operate a program at maximum efficiency. Differences in salaries and in the cost of educational supplies and materials exist between districts and these differences will be reflected in educational program cost and in cost indices.

#### SUMMARY

Special educational programs for handicapped children should be an integral component of each state's system of public education. The state should take steps to see that all handicapped children are identified and provided with free and equal access to an educational program designed to help them deal with their handicaps. The state must also insure that its organization for education makes the needed educational programs equally available to all children. Where existing patterns of school district organization cannot satisfactorily meet the needs of all handicapped children, other alternatives such as intermediate educational agencies or educational cooperatives should be encouraged.

The state's program for financing education should provide for financing the education of handicapped children as an integral part of the state school finance program. The program should recognize the generally higher cost involved in educating handicapped children and provisions should be made for equitable sharing of these costs. No handicapped child should be denied access to an educational program appropriate to his needs because he lives in an isolated community or because his parents are poor.

Mr. BRADYMAS. Let me first welcome all of you here and I would like to ask a question. When you talk about equitable funding for the several States and ask about the viability of the \$800 figure and if it is a realistic figure, I wonder if you could make some comments on the whole problem which Mr. Eshleman has been alluding to, that of costs? How do we define costs? Do we require several cost categories for different kinds of handicapped, for different parts of the country? Which ones generate more excess costs? What can you tell us about that general cost issue?

Mr. NYSEN. I would make a statement, then if anyone else would like to, they may respond.

Most likely, the cost factor would have to be done categorically. I will speak for myself because it is the best experience I have at this point. We have costs for areas of the handicapped that range from a low of approximately \$125 per child to a high of some \$8,000 per child, depending on the nature of the handicap. That, coupled with the fact that the incidence of handicapped, varies. The categories make it impossible to come up with an average cost ratio or average cost per handicapped child.

Mr. GROSS. The factor that comes to mind in our State is that the actual derivation of excess costs at this point is not a very accurate type of activity. We find before we get to excess costs, we have to find a way to get at true costs itself. We are not asking school districts at this time to really report true costs. For example, the cost from the handicapped might have to be added to at the 32-percent level. We do not have the actual figure.



Mr. SCHIFFERBERGER. I am Richard Scheerenberger. I got these figures from the department of public instruction in Wisconsin, which you may want. For 1971-72, the average was \$620.

Mr. BRADLEY. For what kind of pupil?

Mr. SCHIFFERBERGER. Nonhandicapped and \$980 for EMR; \$1,427 for the trainable; \$2,000 for the deaf; \$1,457 for the blind and deaf; \$2,680 for the multiply handicapped and physically involved child; \$1,102 for learning disabled; and \$1,163 for emotionally disturbed. The average, \$1,152. That has increased approximately 30 percent. The average cost for an exceptional child is \$1,659. The excess cost this year is roughly \$767.12. So that gives you approximately what the distribution of these costs are in Wisconsin.

Mr. ORNSTEIN. I am Dr. Samuel L. Ornstein, associate commissioner for mental retardation, Department of Mental Hygiene, State of New York. With me we have Dr. Richard Scheerenberger, who is the superintendent of Central Wisconsin Colony and Training School, and Mr. Garreth Thorne, who is the deputy commissioner, office of mental retardation, department of health, in the State of Connecticut.

If I may, I would like to make a few statements although we have submitted formal written testimony for the record.

We believe that without a very specific and detailed set of priorities and a definition which includes the ultimate intensity of the need, we may end up with a situation in which little money is being disbursed to everyone and children presently excluded, will continue to be denied the benefits of special education.

Second, we believe there ought to be some careful attention to assure that funding of excess costs does not lead to the continued segregation of children outside the normal stream of education. What we are striving for is the reintegration of the child into the mainstream of society. When people in the field get much more money for having a segregated class of blind children, for example, rather than going through the problems of integrating such children into normal classes, you are likely then to take all the blind children who should be integrated in a normal situation out of that normal situation.

The main costs of special education are personnel costs. There is almost a direct relationship between costs and the staff to pupil ratio. A normal class has 1 teacher to 20 or 30 pupils. You go to a class for the mildly handicapped and you have 1 teacher to 15 pupils. In cases involving the most severely handicapped you may require a ratio of 1 to 1. The overall costs of special education follow the personnel costs. Because of this fact, we believe some allowance should be made for the kind of personnel the system generates. By that I mean costs of staff in the typical education system are based on a very elaborate interaction between the staff, department of education, and guild representations which often means that the costs become related to the degrees, number of years in the system, et cetera. I think when we get down to the groups we represent—for example, children who have extensive service need—we have to start thinking about the real functional capabilities necessary. There does not seem to be a very high incentive for performance in this bill as presently written.

Under the "maintenance of effort" language in H.R. 70, there is no incentive to the States to increase their own fiscal commitment to



special education. I do not believe that the maintenance of previous commitments is satisfactory. During a period of rising costs when costs are related to personnel, one can expect every State to show a 5 to 10 percent increase in costs even if the level of services is held constant.

Mr. MICKLEM. I am from Virginia. I would like to suggest there may be disparity between the States with respect to the factors applied. For example, we in Virginia do not use capital costs. We are speaking strictly of operational costs. Some States in fact may apply other factors in determining the excess costs and that should be addressed at some point in the bill itself.

Mr. BRADEMAY. Thank you. I have other questions but our time is running out.

Mr. Eshleman?

Mr. ESHLEMAN. I agree with you on the wide variance of costs for the handicapped children. We have to find some solution. A flat grant for handicapped children, that would certainly be the easiest solution. I am asking you, would that be agreeable?

Mr. GROSS. I do not think so because the trouble with the flat grant is that you then go to the State, in effect.

Mr. THORNE. I am Gareth Thorne from Hartford, Conn. I would like to speak specifically to the question of cost because I believe it is very important that we consider the handicapped individual and the multiplicity of problems and the catastrophic circumstances which arise from his handicap. It is very difficult to come up with a cost figure and say with this amount of money we would be able to meet all those objectives. If we are really talking in terms of the severely handicapped child, whether or not he is in residence in some facility or at home, we must consider the program for this person on a 24-hour basis. Whether it is a homebound program, health program, et cetera, the maximum efforts of all resources have to be bound together. In considering costs for this particular group of people, I think we have an entirely different problem. In my written testimony, I have presented an analysis of 90 percent of the severely retarded children who reside in the State of Connecticut. In the course of preparing that analysis, we found that the developmental problems of severely handicapped children and adults are almost catastrophic. The physical problems are serious and we have to depart sharply from traditional educational concepts when applying programs to these people.

Mr. ESHLEMAN. Are you saying in effect we should define 10 levels of handicap and have a reimbursement formula for each of those 10 levels?

Mr. THORNE. I am saying I believe that the striking differential in the costs of serving multiply-handicapped children should be reflected in the distribution formula contained in H.R. 70.

Mr. ESHLEMAN. I have not made up my mind yet, but on the educable child, your State and my State vary \$2,400 to \$2,800 on the educable child. So I don't know how we can come up with a formula that would classify the 10, 12, or 14 types of handicaps and have a formula for each type.

I will turn it back to the chairman.

Mr. BRADEMAY. I think Mr. Eshleman's questions were very helpful and I know we are all fighting what I am sure you perceive as a difficult problem for us if we try to legislate intelligently here.

Let me turn to another kind of question, one which I put to Governor Lee a minute ago. That is, in light of the testimony which we have been hearing that the States have a surplus of funds available, why doesn't the State spend some of these funds to pay for the education of the handicapped children, thereby making unnecessary the passage of this kind of legislation?

Mr. NASH. First, I am not sure what our acceptance is. There was some surplus in the State of Georgia. There were priorities there, as well. Special education got a proportionate share and it has for the past 3 years.

So it is difficult to respond to that kind of question, since we feel our State has not been slighted in the amount of funds appropriated.

Mr. ORNSTEIN. I think this is the crux of the problem. I don't believe that Federal money will ever be sufficient in the area of special education. Therefore, I think the money which is available should be used to catalyze the States who respond to the need of handicapped children. It is not only a question of surplus moneys but it is a question of priority of need; and so, although there are many States that have a lack of funds, there are a few States who have significant progress in educating handicapped youngsters.

I think the important consideration is that the bill not simply become another device where the responsibility is shirked off by the local school district or State. How one arrives at that I surely don't know. But I think that is the crux of the problem. The money is needed, but it may be needed essentially to get this responsibility energized at the State and local level.

Mr. BRADEMAs. Would you gentlemen favor a maintenance-of-effort provision as contemplated in the bill?

Mr. GROOS. I think there is a comment that could be made in terms of maintenance of effort. The bill as it is written is more of a supplemental kind of situation, although of course it does provide for improving, but I think with the total mass amount of money coming into a State that is already expanding at a high level, it would tend to create quite a snowballing effect in the State, which may already be at a very critical point in terms of generating not only the present local and State funds but future funds.

Mr. THORNE. I would suggest, adding to my colleague's comment, that while we support the bill right down the line, we sincerely hope it is never construed as being the solution to a multiple problem; by virtue of passage of a bill and the additional funds that would be available through the educational program, we should not be lulled into thinking that now we suddenly do not need to make any effort in other aspects of the problem.

Mr. BRADEMAs. I wonder if you could say a word about, very briefly, the question that Mr. Eshleman put, namely, revenue sharing. To what extent has general revenue sharing money been used in each of your States for the education of handicapped children?

Go down the line and answer the question.

Dr. THORNE. I am not aware to what extent revenue sharing funds have been used specifically for handicapped children. We did have a surplus this year in the State of Connecticut and a lot of surplus funds have been diverted to programs for the mentally retarded.

Mr. SCHIFFENBERGER. I cannot give you an answer. Most aid for educational programs in residential facilities in Wisconsin are coming from title I. Beyond that I cannot give you an answer.

Mr. ORNSTEIN. I just moved to New York 6 months ago. I am very familiar with the State of Washington. Revenue sharing there is largely a local affair. Little of that money has gone to the educational program for the handicapped child. It seems the same is true in New York State.

Mr. NASH. Not to my knowledge.

Mr. GROSS. In Minnesota the money has been used for handicapped.

Mr. MICKLEM. I could not answer precisely. I do believe, however, some did go into institutional programs where handicapped children were in residence.

Mr. BRADENAS. I do think we need to get more information on that. I long ago voted against revenue sharing. Some of my reasons were reasons of principle. I don't like the idea of splitting the taxing and spending power to that extent.

Another reason was I did not feel that the moneys were likely to find their way into programs that are aimed at benefiting the multiply-handicapped. And the GAO study on the use of general revenue sharing moneys for programs to benefit the older—a study instigated by Congressman Pepper of Florida—showed less than 1 percent of revenue sharing moneys were going for programs to benefit the elderly. So that is one reason I felt that revenue sharing is really a snare.

Let me ask another general question that has to do with my first question on costs. What single item is the major excess cost—salaries, transportation, teaching materials, devices; and what percentage, generally speaking, does that particular item represent of the total excess costs? Is my question clear?

Mr. ORNSTEIN. I would say that salaries are first; second is transportation.

I might say in most excess cost situations we have a cost which is not counted because of the way it is handled; that is, the construction of new facilities. I would not want this cost covered as an excess cost in the bill, but many States have gotten around construction cost by putting special education programs in the basement of churches and so on.

Mr. BRADENAS. Mr. Thorne, you said salaries represented a major item. What percentage of the excess cost?

Mr. THORNE. We use about 20 percent on operating, 80 percent on staffing.

I would like to underline what Dr. Ornstein said about transportation. This seems to be a matter which I would hope would be specifically considered in the bill.

Mr. SCHLESINGER. Depending on where you are, either personnel or transportation.

Mr. BRADENAS. Generally speaking; you would agree that salaries represent the major factor in the excess cost in educating the handicapped over the normal children.

Your answers have been most helpful.

I call on Mr. Quie.

Mr. QUIE. Thank you, Mr. Chairman.

I would like to follow up on the questions Mr. Eshleman asked. Possibly there is a great difference between the cost of training or educating the handicapped child, mentally retarded, deaf, blind, and so

forth, from State to State. There is a tremendous variation. If we develop a formula, should we just ignore that or should we look at it?

If we are going to pay more than half the cost of training and educating the handicapped child, I imagine the taxpayers would want us to show some responsibility to find out whether you are making excessive expenditures or not.

Mr. SCHEERENBERGER. Again, I think you will find a big difference in cost between States. Due to salary differences. It is pretty difficult to say we are going to pay a set figure. You have to take into consideration these differences. For example, we pay people in our residential facility two to three times more than they are getting in other States. So that this factor would have to be taken into consideration in developing an equitable formula.

I think, unless I am radically wrong, that salaries would be the big variance between the States.

Mr. QUE. Is that variance greater among the handicapped than the variance that exists among the regular teachers?

Mr. NASH. I would like to speak to the public education point of view. We have identified a skeleton set of services and programs which we believe are essential to the carrying out of any program for any handicapped child.

The start of instruction would be teachers and teacher aides. Instructional support would include support equipment and material, guidance, counseling, and other instruction support staff such as school psychologists, social workers, and so on. Another category, management, would include administration, clerical, and secretarial. Then transportation, and then other services, which would include health and food.

We would agree that the salaries of teachers would by far be the No. 1 factor in terms of determining excess or lack of it. It would probably be done essentially on the basis of teacher-pupil ratio, which is what most of the regular class public education formulas are based on, during the initial phase.

That would be excess, depending probably on the number of children handled, you might say, by a teacher in a given day.

Instruction support- it is obvious all equipment will be in excess simply because the nature of the equipment is usually in addition to the regular class equipment, thereby making the total equipment outlay a much larger excess.

There is in our State in the area of transportation, an excess cost. Everything that we provide right now, essentially everything we provide, is excess in the area of transportation, because there are special appropriations made to purchase special kinds of equipment for transportation purposes, which includes in many cases hydraulic lifts and so on. All of that would be readily identifiable as an excess cost over a regular transportation program outlay.

Many of them probably could not be identified, and I think part of the reason the excess cost factor would vary from State to State goes back to the salary factor. If the average teacher salary in Georgia is \$8,500 for the upcoming year, which it is, and it is \$10,800 in Massachusetts or \$12,000 or \$14,000 or whatever it might be, if you took those two salaries and divided them by the same number of children handled in those areas, the difference you would get is an excess cost factor.

Mr. BRADEMAs. If I could interrupt, that is the second bell. Mr. Quie and I have to run over to answer our names.

I will be coming back.

Mr. QUIE. Give me an example of your figures. In Pennsylvania the average expenditure per child is \$1,177 and in New York it is \$1,584. So there you have about a \$400 difference, for which salaries must be the basic reason.

When you come to the education of the mentally retarded, Pennsylvania has \$1,300 and New York has \$2,800; so there is a \$1,500 difference. Now, it cannot be just salaries then.

Mr. ORNSTEIN. Obviously this is the crux of the problem. What you are reflecting is the fact that in each State special education systems are so historically based that unless you are familiar with that State and what it does, it is hard to make sense out of the figures.

Program for sensory handicapped children provide the most striking example. If a local school district handles one child, you find the costs are fairly reasonable; but if the State has a history of private facilities for the blind which over time have maintained their own board but are now almost entirely funded by the State—for example, New York State—you will find enormous costs because what you have built up is a nonmonitored cost system.

I think all of this really speaks to the fact that the Office of Education, that agency that is supposed to further the policies of the Congress and the Executive, will have to get into a much more intensive review of what money does and stop treating programs and money as if they are two separate things.

Mr. QUIE. I imagine we would if we passed this legislation. It kind of reminds me that if a person was told that one's uncle would pay 75 percent of the excess cost over the lowest cost automobile you could purchase, which would be about \$2,500, what would he likely buy? Disregarding the energy crisis, a Cadillac. If uncle was going to give you 75 percent, I bet that there would be a bunch of Cadillacs. And we are not going to fund a bunch of Cadillacs. We want to help kids but not fund Cadillacs.

Mr. THORNE. I would agree. But I spent part of my professional life working in the West and the other part in the North and in the South, and everywhere I worked the logistical problems of getting services to severely handicapped people are great.

For example, take the State of Montana or the State of Arizona where you have sparse populations. To get a concentration of sufficient size of the very severely handicapped together to warrant a program—that is to administratively be able to set up a program which had all the dimensions it needed—meant you had to set up some kind of residential facility, to move those people into because you only had one from this town and maybe one from 50 miles away.

So, in other words, to provide the educational and general treatment services, it meant you had to build in a lot of factors that normally you would not consider.

In a small State such as Connecticut, it is relatively easy to transport people to programs anywhere in the State or within the regions of the State.

So these are built-in difficulties that I think compound the problem, but nevertheless I think this is why we have to treat each State differently.

Mr. QUINN. I am going to try to come back.

When you answered that way, I wonder why it costs \$2,300 in Connecticut and \$1,100 in Idaho.

Mr. THORNE. Because of the differences in the services we provide.

Mr. BRADYMAS. If we could resume, I will continue with some questions that I have while awaiting the return of Mr. Quie from the quorum call.

I will turn to a question to which I believe Mr. Nash made some reference, namely, that of the personnel required to implement substantial increases in funds for special education programs. I know that our colleague on this subcommittee from Idaho, Mr. Hansen, has also expressed his interest about the effect on our pool of trained personnel, as it were, to meet the changed situation that would result as a consequence of the passage of legislation along these lines.

I wonder if you could give us any general comments you may have in regard to the personnel problem.

Mr. SCHEERENBERGER. First off, at least the experience in the Midwest is that at present there is a healthy number, if not a significant overabundance, of trained people in special education. I think the people are there.

I think one of the significant changes which has to be made is within the character of the training programs which will be offered. If we are going to serve the severely and profoundly multiply-handicapped child, some of the principal programs must be modified accordingly.

This is the difficulty. We hire teachers. For every vacancy we have, we have 150 to 200 applicants, but it requires a supplemental year of training with the subpopulation we served. But to our knowledge in the Midwest the teachers are there, have been trained, and many are seeking appropriate appointments.

Mr. NASH. I am dying to know where they are, Mr. Chairman.

Mr. GROOS. Mr. Chairman, in regard to the personnel problem, through the years we have always worried before the funds were made available whether the teachers would be there to teach the children. We recruited people and we were criticized, but children got service.

Although the programs in the institutions are not as adequate as we would want, we have in the past few years had tremendous assistance from the training institutions, and I think this kind of bill would give us enough detail in a State plan to turn around and help the institutions determine their manpower needs. That, coupled with a grant that would allow school districts to provide inservice training—I don't see the manpower problem would be insurmountable.

Mr. THORNE. I think insofar as the special education teacher is concerned, in the Northeast, we seem to have a sufficient number of people to meet the needs of the regular special education program.

Again, however, in the areas of the more severely handicapped, where you have multiple handicaps, I believe we have a serious shortage of people who are trained specifically to work with these individuals.

For example, of all the profoundly and severely retarded children that we found in our sample, only slightly over 2 percent had usable speech. We found that well over half had no speech at all.

This just means that the kinds of expertise that it will take to work with the communication problem of these children will have to be

developed; in Connecticut we are developing new systems of gestural language as one approach to this problem.

But we find that the speech people who are coming out of the usual training institutes are as confounded by these kinds of communication problems as other professional people. So there is going to be a need for a whole new breed of people specially trained to work with the multiply handicapped.

I do believe that H.R. 70 would provide much incentive for the creation of new areas of specialty and new types of functional teachers not necessarily the certified degree teacher but, as Dr. Ornstein mentioned before, the kinds of people who can work with the basic developmental problems of children.

Mr. BROWN. However, gentlemen, I would make this observation, at least sitting here listening to what you are saying. I have heard some of you indicate that there is an adequate supply in your own part of the country of special education personnel as of now; others of you have taken issue with that assessment. But there is still another tier to my question.

Indeed, the thrust of my original question was the implications for the supply of special education personnel of the passage of legislation along the lines of that being considered here today.

It would seem to me, in a common sense observation here—and I would set this up as a hypothesis for you to respond to—that even supposing there were today an adequate supply, the passage of this kind of legislation would generate the need for more. Is that not a reasonable assumption?

Mr. NASH. That is a very good assumption. I would like to speak to it from this point of view. As we state in our formal statement, it would be a serious loss for us to lose the essence, the meaning and the intent of the current 91-230 part (d), for example.

I think training moneys are extremely important. We need training moneys from both an inservice point of view as well as from a formal training preparation point of view. There are dozens of States that do not yet have nearly the staffs that it would take to run a comprehensive program of this magnitude in any way. Plus the fact that we still have tremendous inequities in the categories of training of teachers; low incidence population; teachers are needed in the country for education of the deaf, teachers for severe learning disabilities, teachers for youngsters with behavior problems are needed in large numbers.

I think it would be serious to play down the whole aspect of training. Manpower has to be one of the key factors in the implementation of this kind of legislation.

Mr. ORNSTEIN. My comment would be that if we fund special education programs properly so that a need exists, I suspect the normal economic consequence of that need will be that the college of education and other special training groups will start producing the people.

I would be very reluctant to contemplate pumping great amounts of money into specific training to parallel the money going to the schools for direct service with the expectation that the normal economic operations of demand and supply would take over. In addition, as I said before I have some concern with the way the personnel structure of most States work. We now are in a situation where, for instance, if a man is necessary to run the transportation system of a school system, in



many States, one of the requirements is he have a master's degree in education. Now I am not sure that is a necessary requirement.

In some States a person with a Ph. D. in clinical psychology cannot work as a psychologist, but a school teacher who has taken three courses in psychometrics can, because she fits the educational standards.

Until we start talking about money and duties and personnel following functions rather than a kind of mandarin system in which if you stay in school long enough you get a high paying job, then I think we will have serious economic and personnel problems.

Mr. BRADLEY. I appreciate that observation. I have always been concerned about our voting Federal program moneys for services without giving adequate attention to where the people with the training necessary to provide such services will come from.

Let me ask you another question. It has been suggested that the passage of the kind of legislation that would represent increased infusions of money for educating handicapped children might have the result of motivating States and local education agencies to label as "handicapped" some children who are not really handicapped. Such children might be placed in special education programs where they don't need that kind of service, simply because the money flows therefrom.

Is that a false alarm? What is your professional judgment on a question of that kind?

Mr. ORNSTEIN. In one of the States I was in, which was a very "progressive" State with many services, one did find such labeling occurring.

It is too easy for a local superintendent or local principal to go to each teacher and say: "What child is giving you the most trouble?" The troublesome child usually turns out to be a rather aggressive and hostile boy; so he gets pulled out of the class and you set up a special education class. Unfortunately, after that boy is out of the class, another boy takes that assigned role.

You can see the economic advantages. You get more money for special education, teachers are happier, and it is a kind of endless process.

I think we suffer from the syndrome of segregating people on spurious issues—the "sprained eyelash" syndrome. The person with the "sprained eyelash" is the one you want to serve because you are almost certain to be successful.

I think you only find that this phenomenon occurring in the richest States, and I believe as these other States start to get adequate funding for special education services that will become a serious problem.

Mr. MICKEL. This, of course, has been of concern to most State directors and most school people. However, I do not see, speaking from my State's point of view, that it would be a serious problem. We think our procedures through regulations, through guidelines, through due process and others are sufficient that we could reasonably assure against such practices.

Mr. NASH. I would add, too, that the bill also includes a State plan requirement which would have to have some effect in this regard.

There might be one other factor which you might like to look at. That would be to apply a percentage factor at the top: just simply say that States will be eligible for X number of dollars up to a per-



centage of the total enrollment or some total population within a given State, and just put a top dollar on the thing. That would be one other factor.

Mr. Groos. Mr. Chairman, I would agree that I think we may be pointing at a false factor if we worry about the way the money could come, would promote a labeling concept. Although I would agree there is some truth in that, I would think a far more serious concern does get us back to the financing of programs that are predominantly the easiest programs to operate in the State.

Mr. Thorne. I would just like to make one comment. I think there are some ways of insuring against labeling. I would like to see a provision in H.R. 70 for individual accountability similar to the system we have in the State of Connecticut. We use a contract for services concept where everybody who enters a program must have a program written for him based on an assessment of his problem. And this program then is implemented and checked periodically.

I think this approach insures against the admission of people to programs unless you can state specifically what the problem is and what you intend to do about the problem. There is a clear understanding of nature of the child's problems and the service goals. The contract must be agreed to, not only by the professional person making the judgment, but also the families who are involved in that judgment process and who must participate in the total plan on behalf of the child.

Mr. BRADEMAY. I might observe, Mr. Thorne, that we did in this subcommittee, as I recall, make a similar requirement for an individual plan in the Rehabilitation Act that was signed into law last year. I believe that in my own amendment to the ESEA which calls for an NIE study of the whole area of compensatory education, a similar provision was required.

Gentlemen, I believe that Mr. Que wanted to put some questions to you. I don't want to keep you overly long, but if you would not mind hanging on a few more minutes, I would like to invite to testify our two remaining witnesses this morning, and you can have a few minutes' recess while we see if my Minnesota colleague returns.

We will hear from Mr. Gibson and Mr. Selnick, but first I want to reiterate my own warm appreciation to you. Your testimony, as I think you can see from the questions put to you, has been extremely helpful.

Mr. SCHEERENBERGER. Mr. Chairman, I would like to add one point. I raised the question about the right of youngsters not to be classified as retarded. I hope when this bill is reexamined, that one of the provisions emphasized is the right of those kids who are in institutions, to receive an education in the public sector. If we pour continuous amounts of money into institutions, we will never get the kids out; and to date, the public schools have been totally unresponsive to this particular population. So I hope that would be one point for destigmatization.

Mr. BRADEMAY. Thank you, very much.

Mr. BRADEMAY. Now we will hear first from Mr. Robert Gibson and Mr. Harrie M. Selznick.

Gentlemen, you can see we have been fast running out of time with so many witnesses, so if you would be kind enough to try to summarize

your statements we will put them all in the record and then try to put some questions to you.

[The statements referred to follow:]

STATEMENT OF ROBERT C. GIBSON, PH. D., DIRECTOR OF P. L. SERVICES, POLK-STORY JOINT COUNTY SCHOOLS, DES MOINES, IOWA, AND CONSULTANT ON SPECIAL EDUCATION, OFFICE OF STATE PLANNING AND MANAGEMENT, COMMONWEALTH OF MASSACHUSETTS, BOSTON, MASS.

Education for Handicapped Children Act has been aptly described as good social legislation—"good social policy." By assuring civil rights of the handicapped children to an education, it speaks out against unnecessary institutionalization. By establishing due process as a guaranteed practice, parents and children become partners in developing educational plans. I, too, submit that HR 70 is an act of equity. It is a document that will supplement, aid, and override common and statute law. It is designed to protect the rights of the handicapped and enforce rules and doctrines of equity. These alone are sufficient reasons to enact this landmark legislation.

If Congress does not appropriate one cent as authorized by this act, it is essential that old legal doctrines of institutionalization and rules that when narrowly construed have excluded handicapped children from public schools must be set aside.

Children with handicaps need HR 70 to establish for them an equity of another sort. A true citizen's ownership right in the property of our public educational system.

During February, our office prepared an annual request for program approval to the Iowa Department of Public Instruction. We asked permission to hire twenty-six new special educational personnel for the 1974-75 school year. If these are approved we will be able to better serve approximately 800 additional children with special needs. These children are currently without appropriate educational services. One hundred and twenty-six severely mentally retarded children are in our community without public educational assistance.

Knowing that we cannot meet the needs of all our children immediately we have a three-year program projection at the same ratio of one professional to 30 children. Please recognize that this is an average for our program needs. I would caution against generalizing this ratio beyond our 18 school districts. Our current staff, programs, and known children are unique to our 80,000 total public school based program.

If the positions requested are approved we will be thankful to our State Comptroller and our educational program reviewers. Our State Comptroller is primarily interested in keeping our state's fiscal affairs balanced. He encourages our educational reviewers to keep one eye on the dollar sign and to be fiscally prudent while their hearts are sympathetic to kids' needs. It is well that the eye is on fiscal matters, we all should. However, it does hurt when unequal educational opportunity for children is the result when dollars are cut and personnel positions are "red lined" or denied.

During the 1972 approval-review process local schools in Iowa asked for over 300 positions whose cost would have been \$3.1 million. New programs approved and actually begun for the 1972-73 school year number 223 at a cost in excess of \$1.8 million. For the current 73-74 school year the requests doubled to 600 positions and to nearly \$6 million. It will be June 30th before we know how many the new 367 positions approved were actually filled. (I had three positions I could not fill because qualified personnel were not available.)

The meaning of these statistics are clear: (1) local districts and the state are willing to expand educational opportunities for handicapped children—(2) funds available for any given year are limited, and (3) the demand for scarce special educational personnel will continue. To the handicapped children these meanings are equally clear. There will be some who will be continued to be denied, or at least delayed in their quest for obtaining equality of educational opportunities.

In HR 70 the Federal Government has the tool to speed up program development and to improve the quality of education for the handicapped children. By supplementing the state's resources, more programs can be initiated. The present Federal grants, such as Title VI-B of ESEA and other categorical programs serve specific functions in research and development, construction, personnel development and technical assistance. However, HR 70 is needed to place Washington's concern directly on basic services, direct program support.

Last month one of our local school board members voted against an application for Federal funds to staff a program for severely mentally retarded children, while classroom space stands vacant. She did so because she felt that staff for learning disabilities children was of a higher priority. At the same meeting the school board voted to pave an off-street area for student parking in the name of public safety. Three months ago these additional teachers for the learning disabled children had been given a lower priority while the board hired additional coaches needed to provide equalized opportunity for competitive sports for our athletic girls. These choices are having to be made in the name of dollars available, but why are handicapped children's programs lowest on the list?

To answer my own question, might I suggest that there is an erroneous attitude about the costs of programs for handicapped children. This attitude prevails over all other logic. H.R. 70 can help erase a mistaken, misrepresented and damagingly fallacious idea that programming for handicapped children is an excessive expenditure.

Do not misunderstand, I cannot tell you that programs are less than expensive. We can agree that any service or product that is designed for individual consumers to meet the unique needs of a narrow market have costs per unit that are above the average mass-produced assembly-line goods and services.

Please consider, however, that most comparisons between special education services and general educational programs are comparisons of unequals. The usual average per-pupil expenditure for general education includes all costs for all children from kindergarten through the senior of high schools. They include such programs as mass recess (freetimes), or fourth and fifth year foreign language, or small group or music lessons. In the appendix I offer such a comparison of Total General Fund and Special Education Expenditures by School Districts. Please use deliberate care when comparing unequal program costs.

Massachusetts' new Chapter 766, mandating special education, states that "*The cost of instruction training and support, including cost of special education personnel, materials and equipment, tuition, transportation, rent and consultant services, of the children in special classes, instruction periods or other programs provided under section three shall, for the amount by which such costs exceed the average per pupil expenditure of the city, town or school district for the education of children of comparable age be reimbursed by the commonwealth to the city, town or school district.*" This is a step at a more logical comparison of costs—by age groups. Nation-wide this can be easily done by elementary school age youngsters and the secondary school age group. However, these are still not fair comparisons. Schools do not have programmatic cost efficiency systems, where the most logical comparisons can be made between special education's individualized programs and the many other specialized instructional programs which will prove as equally expensive. Vocational technical high schools because many have separate plant and program budgets, are the easiest to identify as having equally expensive programs of public education. Special subject areas of Music, Arts and Science have higher per-pupil costs than the traditional grammar school.

Again my point is that handicapped children should not be singled out and denied or delayed in obtaining equity at the bar of educational justice. The attitude that they have excessively expensive needs must be countered with, but so have other children for which our society has long provided specialized training programs.

H.R. 70 tells it like it is—children have rights. All children have equal rights, difference in program needs are no basis for discriminatory attitudes and/or programs. To recognize expense is not to justify a discriminating attitude as to the expense being excessive.

The higher costs for all programs are due to needs of individualized or smaller group activities, special equipment and materials, and scarcity of qualified special instructors. Transportation cost next to personnel salaries are the highest of the non-instructional expenditures per pupil. The map in the appendix displays the distribution of mentally retarded children currently in state institutions in Massachusetts. To deinstitutionalize these nearly 3,000 children will create tremendous needs for group homes. Equally important is the need for additional

buses to get these children to and from special education programs. The middle section of the Commonwealth around Springfield is similar to my two-county area in Iowa in terms of student population and distance from homes to schools.

In Iowa, this next month we will take delivery of five new 18-passenger buses for transporting more handicapped children to and from special education centers and their homes. The \$58,000 outlay for the equipment is just the beginning of our costs. For one mentally retarded young lad going to school last year was an ordeal each day. He rode a total of 3½ hours daily in order to spend five hours with his teacher and classmates. The bus operation expense was \$6,175, including the driver's wages. Seven children shared this expense at \$882 per pupil. Compared to a bus for forty children going on an average route, the cost per child would be about \$150 per pupil. Again, compared to a debate squad transportation trip to a meet or a field trip to a courtroom, a single trip for the handicapped would not appear so expensive. The higher costs are there. However, are they really excessive? Value judgements ill-conceived have added far too long to the real handicaps of our children. HJR 70 should go a long way toward helping us revalue our attitudes for all children. (In the appendix on the Total General and Special Education Expenditure sheet is a column of "Individual" costs. Ninety percent of that column's total was for transportation costs for some 3,800 individual handicapped children.)

In conclusion, the impact of HJR 70 upon our Polk-Story Special Education Expenditures can be estimated by a review of the actual cost data presented in the appendices. It appears that the total excess cost would have been covered, there would have been funds to serve those unserved, and local, county and state budgets would have been able to use their funds on other educational budget items or permitted a lower property tax to their constituents.

In HJR 70 had provided \$600 for each of the 8,000 handicapped children plus \$300 per pupil excess cost for 75% of those children, Iowa could have presented \$6.15 million to Polk-Story school districts instead of its \$808,410. This six-plus million dollars would have been 64% of our total \$9.77 million expenditures. That would have been most helpful to Iowans.

The attached newspaper clippings indicate projected costs for Massachusetts citizens to fund the first year programs under their new Chapter 76B. It is interesting to note that HJR 70 if fully funded would meet the \$26 million need. It would also help relieve some current load on the states' resources so that they could more nearly fund their general education costs. That would be most helpful to Massachusetts.

Whether or not you can be that helpful financially, what is of paramount importance is that HJR 70 needs to be enacted. The endorsement of your concern, your extension of the Bill of Rights to cover all children as equal citizens is important. As Governor Sargent of Massachusetts stated to you earlier this month, the states are going ahead. My home state of Iowa has a civil rights, educational governance, and finance bill for handicapped children half-way through its legislature. By the end of the month, it could be on Gov. Robert Ray's desk.

HJR 70 is needed for all our country's handicapped. Congress needs to be identified as among the leadership who are granting the right of equity of ownership in the public school programs for all our handicapped children.

#### APPENDIX

##### *Combined regular and special education costs for 8000 handicapped pupils*

Regular education expense (\$920 each).....	\$7,360,000
1,200 special education students spent the majority of the day outside the regular programs. The special education activities cost was \$1,342,754. These expenses replaced their regular share, therefore the excess cost above the per pupil average was.....	238,754
6,800 special students spent only a small portion of the day out of the regular placement. These expenses replaced no portion of the regular per pupil charges, therefore they all were excess.....	2,080,656
Total combined regular and special costs.....	9,688,410

*Revenue sources with state assistance paid on pro-rata basis or in full*

State foundation aid (limited to \$300 each)-----	\$2, 400, 000
State special education reimbursement (paid on 27 percent basis)---	808 410
Local school district and county property tax-----	6, 480, 000
<b>Total -----</b>	<b>9, 688, 410</b>
State foundation aid (limited to 40 percent)-----	2, 944, 000
State special education reimbursement-----	2, 328, 410
Local school district and county property tax-----	4, 418, 000
<b>Total -----</b>	<b>9, 688, 410</b>

**TOTAL GENERAL FUND AND SPECIAL EDUCATION EXPENDITURES FOR 1972-73 SCHOOL YEAR BY DISTRICTS**

District	General fund expenditures	Special education expenditures			
		Individual	S+1/3s <sup>1</sup> classes	Personnel	Tuition paid (contract)
Ankeny .....	\$3, 034, 298 26	\$6, 551. 17	\$24, 775	\$44, 651. 96	\$11, 772 38
Bondurant-Farrar .....	688, 146 96	8, 010 00			10, 681 58
Des Moines .....	45, 105, 233 70	156, 027 53	1, 049, 158	1, 020, 148. 00	
Johnston .....	1, 076, 344 82	4, 040 21			10, 675. 15
North Polk .....	734, 199 22				
Saydel .....	2, 439, 875 59	6, 243 50	39, 167	59, 618. 68	9, 916. 12
Southeast Polk .....	3, 249, 591 51	9, 146. 00	62, 690	27, 708 63	9, 025. 22
Urbandale .....	3, 190, 854 70	5, 138 08	9, 733	43, 201. 10	12, 266 56
West Des Moines .....	5, 698, 081 76	23, 652 94	49, 286	45, 612 00	15, 624 22
County office (less Federal) .....	1, 951, 865 08	12, 553 75		389, 100 79	(589, 400 00)
<b>Polk County total .....</b>	<b>67, 168, 491 60</b>	<b>231, 363 18</b>	<b>1, 234, 809</b>	<b>1, 630, 041. 16</b>	<b>79, 961 23</b>
Ames .....	6, 298, 290 95	22, 850 00	76, 795	98, 692 00	
Ballard .....	988, 247. 30	3, 746 40			9, 120. 70
Collins .....	246, 899 76	5, 528 20			8, 472. 50
Colo .....	365, 667. 32	5, 487. 60			8, 156. 68
Gilbert .....	548, 153 80	4, 682. 16			12, 648 22
Maxwell .....	367, 145 46	2, 072 00			3, 946. 73
Nesco .....	497, 114 85	7, 358 40			7, 559. 62
Nevada .....	1, 355, 989 53	13, 624 00	31, 150		9, 924. 12
Roland-Story .....	964, 489. 52	8, 285 60			8, 904. 63
County office .....	139, 976. 00	720. 00		60, 205 73	(17, 500 00)
<b>Story County total .....</b>	<b>11, 771, 989 49</b>	<b>69, 354 36</b>	<b>107, 945</b>	<b>158, 897. 73</b>	<b>78, 233. 20</b>
<b>Joint county total .....</b>	<b>78, 940, 481. 49</b>	<b>300, 717 54</b>	<b>1, 342, 754</b>	<b>1, 788, 938. 89</b>	<b>747, 594. 43</b>

<sup>1</sup> S=Salary

**SPECIAL EDUCATION ACT SEEN INCREASING TAXES**

Unless the Commonwealth can provide the money, tax rates across the state will have to be increased to fund the new special education law that goes into effect this September, Rep. Joseph D. Early (D-Worcester), warned yesterday.

Early, vice chairman of House Ways and Means Committee, said, based on information concerning the number of students who would qualify for special education programs, the cost could be as much as \$130 million.

In his fiscal 1975 budget, Gov. Sargent has earmarked \$9 million as the state share of meeting the new educational expenses but this money will not be distributed to the communities for a year.

This means that all of the communities required by the law to implement special educational programs must pay all of the costs.

Sec. of Administration and Finance William I. Cowin also estimates that the cost of the new programs could reach the \$100 million mark.

But the state Dept. of Education, in an announcement made Tuesday, pegged the initial start up costs at \$26 million in the first year of the program.

Other estimates indicate that the cost for the new educational services could run as high as \$25 million in the City of Boston alone in the next school year.

House Speaker David M. Bartley (D-Holyoke) said yesterday that he is concerned about the cost of the program and was optimistic that the legislature would make at least \$26 million available to the cities and towns to offset property tax hikes.

Bartley said he considered the \$100 to \$130 million estimates for the cost of the program excessively high and hoped the first year expenses would be less than \$26 million.

At a hearing before the House Ways and Means Committee on the education budget it was reported that as many as 99,000 youngsters have been identified as requiring special education.

The committee was also told that after an evaluation as many as 35,000 other youngsters would be eligible for similar special education classes.

Early was told that the cost of special education could be as much as \$1000 per pupil.

#### ONE PERCENT BUDGET HIKE EXPECTED FROM NEW SPECIAL EDUCATIONAL LAW

Waltham—The new state special education law (Chapter 766) has added about one per cent to the average community's school budget for next year, according to data released by the state Department of Education yesterday.

The new law takes effect in September. It puts much more responsibility for helping handicapped children on the local school systems than the old special education laws do.

Some local and state officials have claimed it will be a financial disaster.

During the past month, state department staff members surveyed 73 school districts with half the state's students, to find out what the financial impact of the law will be.

The results were announced yesterday at the state Board of Education's monthly meeting. The percentage of the average school budget devoted to special education in the 73 school districts sampled will rise from 4.2 per cent this year to 6.2 per cent next year.

But about half of the increase would have happened even without the new law, if the trends of the last few years had continued, state officials said.

Special education costs have been a very small part of most budgets, but have been rising about 25 per cent a year.

Next year they are scheduled to rise 47 per cent, on average. But this increase is still only about two per cent of the average budget.

The state-wide survey agrees with the results of a Patriot Ledger survey of South Shore area communities taken several weeks ago. That survey found that the increase in special education spending, both because of the new law and for other reasons, would be under two per cent in most communities.

Dr. Joseph Rice of Scituate, the department's associate commissioner for special education, said the new law will cost about \$26 million state wide next year.

The state survey also found wide variety in the amount of money different communities planned to spend.

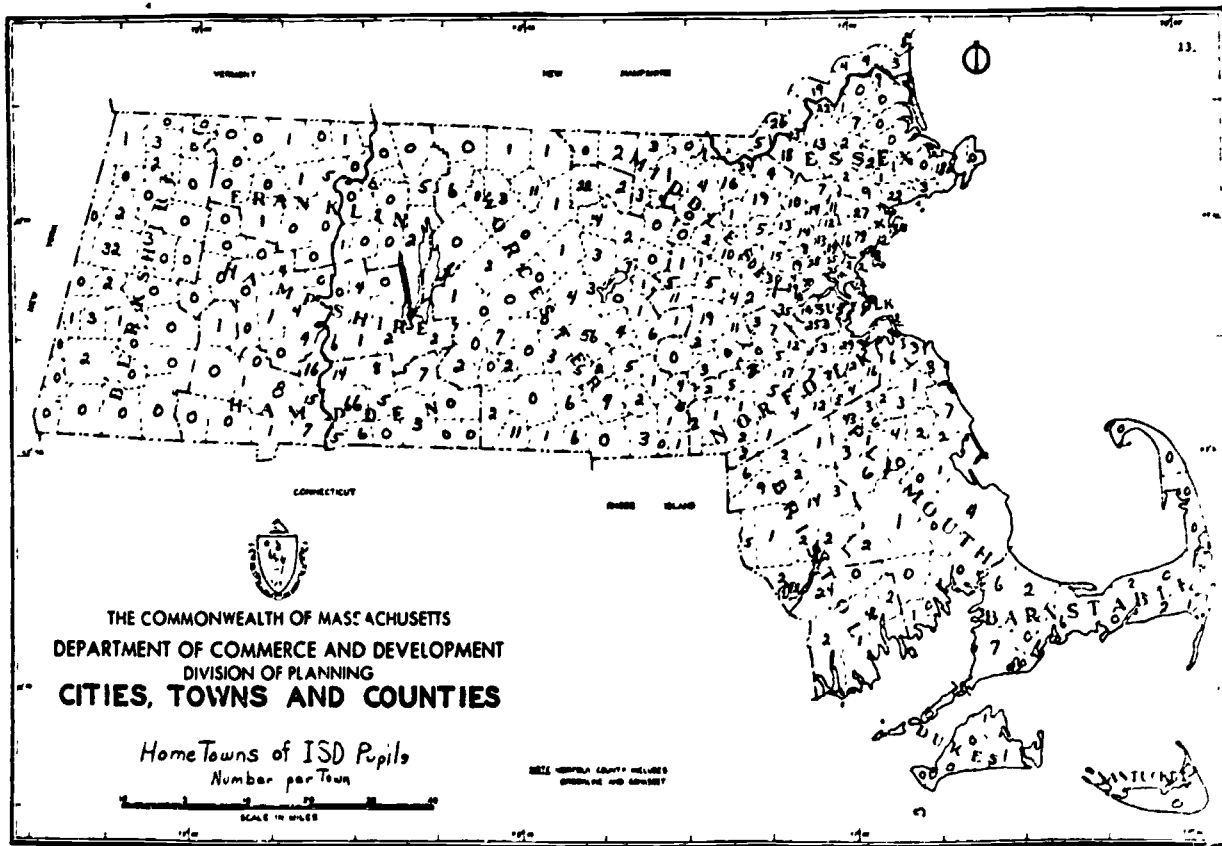
The total amounts which communities planned to spend on special education ranged from .3 to 15.5 per cent of their school budgets.

Dr. Rice said his staff would check back with the communities at the extremes.

"Quite frankly, some communities are spending too much," he said. In some cases, he said, handicapped children get expensive tutoring programs, when it would be both cheaper and better for the children to be taught in groups.

House Speaker David Bartley of Holyoke is expected to announce by tomorrow a plan to soften the impact of the new law on communities which have meager special education programs now, and which therefore have a long way to go to carry out the new law.

Dr. Rice has said he will require only "good faith efforts" towards carrying out the law, and does not expect full implementation "overnight."





## TESTIMONY OF DR. HARRIE M. SELZNICK, CONSULTANT ON EDUCATION

Mr. Chairman and members of the Select Subcommittee on Education, I am Harrie M. Selznick, a consultant on education. I am a past president of the Council for Exceptional Children, a past president of the Council of Administrators of Special Education, a former secretary-treasurer of the National Association of State Directors of Special Education and am currently serving as part-time Executive Secretary for the Council of Administrators of Special Education. I retired two and a half years ago from the position as Area Superintendent for Special Education, Baltimore City Public Schools.

I appreciate the opportunity to present testimony on H.R. 70, a Bill to provide financial assistance to the States for improved educational services for handicapped children.

The purpose of this Bill, as set forth in Section 2, are ones which I most heartily endorse. This Bill represents a reaffirmation of the position that no democratic society should deny educational opportunities to any child, regardless of his suggested potentialities for making a contribution to society. Our system of universal education should ensure learning opportunities for every child. Since the passage of the first public education laws, in the mid-nineteenth century, this principle has received general endorsement but qualified execution. While lip service has been paid to the intent of the principle, various interpretations of the terms "education" and "all children" have deprived many children of their rights.

Aside from the benefits to society which are derived from the provisions of a complete education to our handicapped children, there are other reasons which dictate an expanded program of educational services. From the view point of the individual not only does education enable one to contribute effectively to his society, but it also provides him with an enriched, more meaningful, and for most, a more enjoyable life. To provide this enrichment to the normal child and to deny it to a handicapped child is inconsistent with the values of our society.

While the aforementioned principle is broadly espoused, in practice one finds considerable evidence that there is limited implementation of educational services and programs for the handicapped. This fact is evident through an analysis of the reports compiled by the State-Federal Information Clearing House of the Council for Exceptional Children. That class action suits have been filed in more than thirty states by parents of handicapped children who have been denied enrollment in the special education programs of the public schools is also reflective of the situation as it actually exists.

The requirement for State Plans as set forth in Section 7 of H.R. 70 is a strong step forward. Not only should there be the requirement that states develop comprehensive plans for service to the handicapped, but there should be the additional requirement that each school district of each state submit similar plans to their state education agency. It is only as the planning requirement gets to the location of the child that one is given reasonable assurance that all children will be included in the planning effort. If a basic requirement of each school district is that a census of the handicapped be compiled, the plan could then demonstrate that all children identified as handicapped have an educational placement and plan suggested for them.

I would like to raise question with Section 7 (12). This subsection calls for the distribution of grants under this Act to local educational agencies by the State educational agency. My concern is with the interpretation of the word "grants".

The Federal Government has demonstrated its concerns for the educational needs of the handicapped through the enactment of a number of laws. The majority of the programs which have resulted are administered or monitored by the Bureau of Education for the Handicapped, United States Office of Education. For Fiscal Year 1972 this Bureau administered appropriations totaling \$227,291,116. Other monies were appropriated for services for the handicapped but located within the responsibilities of other agencies of government. A considerable portion of the appropriated money was reserved for research efforts and for the training of professional personnel.

The basic approach required to obtain the advantages of the available funds has been through the development of a project proposal. These proposals were then reviewed at either the State or Federal levels and selection made for implementation. While every community, state and trainer of professional personnel had equal opportunity to submit proposals, the skill in development and presentation of plans to serve the handicapped was not broadly available. The result has been a less than equitable distribution of available funds. In many



cases, handicapped children of a given political subdivision have been denied the advantages of Federal funding because the professional personnel of that community were either unwilling or unable to compete for the available monies.

I am suggesting that safeguards must be introduced which give assurance that monies made available to States are equally available to all children.

I would now like to turn to the question of funding of programs for the education of handicapped children. Whatever funding approach is finally agreed upon, one must not lose sight of the basic reason for which funding is being made available. Neither the process by which money is provided to the schools nor the auditing procedure should be so complex that it diverts from the primary purposes.

Let me set forth some basic principles on the funding of Special Education.

1. All children are equally entitled to the opportunity for an education.
2. The costs of the education for handicapped children will, in most cases, be totally in excess of the costs of education for the "normal" child.
3. Program costs vary considerably not only from school district to school district, but among disability groups and within disability groups.
4. Since there are these great differences, and since diagnostic labels seldom describe the educational program or the learning location which may best serve a handicapped child, a method of funding must be found which is not based on diagnostic labels.
5. Reports as submitted by local education agencies are, in most instances, open to question regarding both enrollments and program costs.
6. Audits done on special programs in several states suggest that the most readily identifiable element of Special Education costs are personnel costs.
7. Since most handicapped pupils are able to make effective use of at least part of the regular grade program, the funding approach should not reward special class placement by increased funding support when regular class placement with supportive services may be more effective for a given handicapped pupil.
8. The funding approach should not reward the school system which is extravagant in the use of its educational dollars, or should it penalize the handicapped children who live in the school district which is financially limited.

The funding approach suggested in H.R. 70 is based on the excess costs of educating handicapped children as compared with those expended for the education of the non-handicapped. The use of this approach presupposes that such information is available in all school districts. Also, it is a dangerous basis which to make payments. Among the practices which I have come across in the examination of programs utilizing the excess costs payment plan are the placement of handicapped children in special classes rather than the regular class placements from which the majority may benefit so that increased payments might be obtained; the payment of Special Education personnel at a higher level than is paid other professionals with equal training and experience because someone else was picking up the excess; and, the purchasing of expensive and sometimes unnecessary equipment because these purchases could be charged as excess costs over those expended for non-handicapped children of the same school district.

The use of State average expenditures is also open to question. Chart number 1, Special Education Average Salary or Certified Staff and Ratio of Pupils to Staff as Reported by Local Units demonstrates the situation as it existed in Maryland in 1972-1973 school year. One will please note that for each diagnostic grouping the most expensive program was from two and a half to three times as costly as was the least expensive. The charts which follow demonstrate that a program of reimbursement which was based on excess costs would create serious inequities. It appears that each school district has its own budgeting and accounting procedure and that some districts include cost factors which are not included in other districts. The only readily identifiable cost factor was that for personnel. One is able to obtain a list of Special Education personnel, with an identification of specific assignment, pupil load and annual salary.

Since a request for the above mentioned information does not permit individual interpretation, it is suggested that Federal financial participation in the costs of programs of education for handicapped children might more logically be based on personnel costs.

A requirement of H.R. 70 is that each State submit a plan to the Commissioner. The execution of this requirement to local school districts, with, as an integral part of the plan, a listing of all personnel in full time assignments at

service to handicapped children, the assignment, the service load and the salary would provide the kind of information necessary. Additionally, it is suggested that the average teachers' salary for each school district be determined. The Special Education personnel costs would then be determined as the number of Special Education positions included

CHART NO. 1

SPECIAL EDUCATION AVERAGE SALARY OF CERTIFICATED STAFF AND RATIO OF PUPILS TO STAFF AAS  
REPORTED BY LOCAL UNITS

Local unit	Severely handicapped				Educable handicapped				Itinerant service	
	Self-contained		Resource		Self-contained		Resource		Average salary	Ratio
	Average salary	Ratio	Average salary	Ratio	Average salary	Ratio	Average salary	Ratio		
Allegany.....	\$6,392	3.3	\$5,573	24.3	\$8,889	12.3			\$7,403	53.0
Anne Arundel.....	8,005	5.5	8,670	12.0	10,920	14.2	\$11,283	12.4	10,189	61.0
Baltimore City.....										
Baltimore.....	10,142	4.1	12,000	13.5	10,312	11.1			12,000	65.5
Calvert.....	8,496	7.8			10,152	14.1			8,233	77.0
Caroline.....	6,038	4.7			7,138	20.0	7,821	21.7	4,529	80.0
Carroll.....	6,994	7.5	8,223	15.0	8,732	26.8	8,125	17.6	8,756	78.0
Cecil.....	9,465	7.6	9,329	23.3	10,453	13.4	9,143	24.0	8,486	79.0
Charles.....										
Dorchester.....	5,592	4.1			7,300	11.0	8,531	25.7	9,247	84.0
Frederick.....	15,339	8.7	9,881	25.6	9,960	16.0	7,764	23.0		
Garrett.....	6,157	3.7			6,681	11.5	8,165	9.8	6,988	80.0
Harford.....										
Howard.....	7,112	7.7	9,935	12.6	10,864	11.8	12,192	16.6	10,115	63.5
Kent.....	7,819	6.6	8,256	15.7	12,700	40.0	8,365	28.5	8,687	76.0
Montgomery.....	9,646	5.3	11,061	24.7	11,776	6.5			12,775	40.6
Prince Georges.....	9,238	6.4	11,510	32.2	10,386	6.5			7,872	24.6
Queen Anne's.....	5,117	2.9	5,500	14.4	8,469	12.9	11,200	23.0	8,171	77.7
St. Mary's.....	6,299	3.4	9,570	26.1	8,921	13.1	9,318	26.1	8,504	76.9
Somerset.....	6,367	5.0			9,060	15.0			6,800	80.0
Talbot.....	7,594	5.5	6,597	11.7	12,133	13.9	10,334	13.0	8,418	80.0
Washington.....	7,726	5.7			11,289	16.3	10,062	28.7	9,645	80.0
Wicomico.....	9,336	5.1	6,470	15.9	8,963	12.9	6,587	29.0	8,900	80.0
Worcester.....	8,120	5.9					9,504	22.4	7,213	53.3

CHART NO. 2

SPECIAL EDUCATION—SEVERELY HANDICAPPED SELF-CONTAINED—1972-73 COSTS

Local unit	Number of pupil		Total cost of program	Total cost per pupil	Total cost less local cost per pupil	State cost per pupil	Total State aid
	State Department of Education	Local					
Allegany.....		199	244,000	2,050	1,255	1,000	119,000
Anne Arundel.....		467	1,241,165	2,666	1,875	1,000	477,000
Baltimore City.....		1,933	2,610,796	1,351	751	556	1,074,748
Baltimore.....		1,265	3,784,000	2,991	2,043	1,000	1,265,000
Calvert.....		133	194,127	1,459	692	697	97,047
Caroline.....		33	51,285	1,554	1,061	1,000	33,000
Carroll.....		117	145,163	1,241	404	403	47,281
Cecil.....		73	118,978	1,630	541	543	68,802
Charles.....							
Dorchester.....		29	49,316	1,701	863	863	25,027
Frederick.....		166	450,834	2,716	1,727	1,000	166,000
Garrett.....		37	73,164	1,977	1,778	1,000	37,000
Harford.....							
Howard.....		77	95,999	1,217	743	710	18,512
Kent.....		33	70,098	2,124	1,809	1,000	33,000
Montgomery.....		2,206	4,410,923	1,995	714	714	1,582,831
Prince George's.....		3,094	6,732,725	2,176	1,338	1,000	3,094,000
Queen Anne's.....		13	24,721	1,902	1,164	1,000	13,000
St. Mary's.....		129	242,015	1,876	1,178	1,000	129,000
Somerset.....		30	47,662	1,589	1,051	1,000	30,000
Talbot.....		22	36,735	1,670	942	942	20,719
Washington.....		231	379,778	1,644	860	860	198,614
Wicomico.....		33	93,268	2,826	2,105	1,000	33,000
Worcester.....		37	60,875	1,645	831	830	30,746

CHART NO. 3

## SPECIAL EDUCATION—SEVERELY HANDICAPPED RESOURCE ROOMS, 1972-73 COSTS

Local unit	SDE	Local	Total cost of program	Total cost per pupil	State cost per pupil	Total State aid
Allegany		46	42,436	923	923	42,436
Anne Arundel		773	788,258	1,090	1,090	773,000
Baltimore City		236	288,826	1,223	1,000	235,000
Baltimore		149	171,429	1,150	1,000	149,000
Calvert						
Caroline						
Carroll		697	487,376	699	699	487,376
Cecil		141	72,486	514	514	72,485
Charles						
Dorchester						
Frederick		537	274,011	510	510	274,011
Garrett						
Harford						
Howard		520	516,819	994	994	516,819
Kent		55	44,488	809	809	44,488
Montgomery		1,110	686,192	618	619	686,192
Prince Georges		4,670	2,057,959	441	441	2,057,959
Queen Annes		180	103,833	576	576	103,833
St. Marys		150	77,632	517	517	77,632
Somerset						
Talbot		129	93,206	723	723	93,206
Washington						
Wicomico		224	95,903	428	428	95,903
Worcester						

Source: State Department of Education.

CHART NO. 4

## SPECIAL EDUCATION—EDUCABLE HANDICAPPED SELF-CONTAINED, 1972-73 COSTS

Local unit	SDE	Local	Total cost of program	Total cost per pupil	Total cost less local cost per regular	State cost per pupil	Total State aid
Allegany		180	169,921	944	149	149	26,820
Anne Arundel		712	746,909	1,049	268	208	148,096
Baltimore City		9,111	9,899,473	1,086	328	328	2,988,408
Baltimore		1,352	1,710,500	1,265	317	317	401,005
Calvert		85	94,498	1,112	244	344	29,259
Caroline		120	92,418	770	275	275	33,006
Carroll		54	30,102	557			
Cecil		83	82,576	995	303	308	25,527
Charles							
Dorchester		14	13,655	975	137	137	1,918
Frederick		58	56,650	977	183	183	10,742
Garrett		70	49,501	707	108	108	7,560
Harford							
Howard		118	169,589	1,437	430	430	50,828
Kent		40	37,320	933	189	189	7,556
Montgomery		458	667,874	1,458	176	176	80,718
Prince Georges		244	550,386	2,256	1,389	1,000	244,000
Queen Annes		149	148,905	991	262	262	39,008
St. Marys		146	143,818	985	287	287	41,902
Somerset		15	15,385	1,026	488	488	7,324
Talbot		97	108,410	1,118	390	390	37,830
Washington		266	261,846	934	200	200	53,234
Wicomico		201	221,103	1,100	379	379	76,116
Worcester							

Source: State department of education.

CHART 5—SPECIAL EDUCATION (EDUCABLE HANDICAPPED) RESOURCE ROOMS, 1972-73 COSTS

Local unit	Local	Total cost of program	Total cost per pupil	State cost per pupil	Total State aid
Allegany					
Anne Arundel	230	256,679	1,116	1,000	230,000
Baltimore City	342	211,106	617	617	372,231
Baltimore					
Calvert					
Caroline	130	64,664	497	497	64,664
Carroll	110	64,964	591	591	69,965
Cecil	296	141,188	477	477	141,189
Charles	351	176,542	503	503	176,542
Dorchester	252	175,764	698	698	175,895
Frederick	75	34,325	458	458	34,325
Garrett	30	29,981	998	998	29,931
Harford					
Howard	133	105,943	797	797	105,943
Kent					
Montgomery					
Prince Georges					
Queen Annes	23	16,370	712	712	16,370
St. Marys	150	70,529	470	470	70,529
Somerset					
Talbot	30	29,849	995	995	29,849
Washington	516	244,274	473	473	244,274
Wicomico	8	3,320	415	415	3,320
Worcester	220	117,125	532	532	117,125

Source: State Department of Education.

CHART 6—SPECIAL EDUCATION—ITINERANT, 1972-73 COSTS

Local unit	Local	Total cost of program	Total cost per pupil	State cost per pupil	Total State aid
Allegany	160	26,129	163	163	26,129
Anne Arundel	2,236	445,909	198	198	445,909
Baltimore City	4,678	692,114	209	209	692,114
Baltimore	4,714	1,151,400	307	307	1,151,400
Calvert	154	19,549	127	127	19,579
Caroline	80	5,948	74	74	5,948
Carroll	624	84,669	136	136	84,669
Cecil	320	40,432	126	126	40,432
Charles	480	52,038	108	108	52,038
Dorchester	252	55,008	218	218	55,008
Frederick	681	116,917	172	172	116,917
Garrett	160	17,902	112	112	17,902
Harford	480	67,559	141	141	67,559
Howard	381	78,717	207	207	78,717
Kent	80	10,731	134	134	10,731
Montgomery	3,453	1,026,408	379	379	1,311,651
Prince Georges	4,519	1,912,552	380	380	1,912,552
Queen Annes	80	10,509	181	181	10,509
St. Marys	400	59,463	148	148	59,463
Somerset	80	8,000	100	100	8,000
Talbot	240	31,558	132	132	31,558
Washington	240	36,485	152	152	36,485
Wicomico	240	33,664	140	140	33,665
Worcester	80	12,730	139	139	12,930

Source: State department of education.

**STATEMENTS OF ROBERT C. GIBSON, PH. D., DIRECTOR OF PUPIL SERVICES, POLK-STORY JOINT COUNTY SCHOOLS, DES MOINES, AND CONSULTANT ON SPECIAL EDUCATION, COMMONWEALTH OF MASSACHUSETTS, BOSTON, MASS., AND DR. HARRIE M. SELZNICK, CONSULTANT ON EDUCATION AND FORMERLY AREA SUPERINTENDENT FOR SPECIAL EDUCATION, BALTIMORE CITY PUBLIC SCHOOLS, BALTIMORE, MD.**

**Mr. Gibson.** I am Robert Gibson from Des Moines, Iowa. In my prepared statement I try to address myself to three concepts: that H.R. 70 is needed because it is a statement of equity; that children will have an opportunity to become coowners in our public school education; and that handicapped children will have the same opportunity.

I would defer any further references, other than I would like to submit that in answer to some of the questions that have been raised, in my testimony there is a map of the State of Massachusetts where I have had the opportunity to serve as consultant the last few months.

This map shows the distribution of children who are currently in the State institutions for the mentally retarded in the State of Massachusetts. It is a distribution of those children to their home cities and towns if we proceed with deinstitutionalization, which I hope we will.

In answer to the comments of the last gentleman, I would like to point out that in chapter 766 which the Commonwealth of Massachusetts passed recently, it said that the educational programs in the State institutions were transferred from the Department of Mental Health and made the responsibility of the Department of Education.

This will help insure the fast assimilation of children out of the institutions and into the public school system, I believe.

One of the major costs besides the number of specialists needed for individualizing instruction is the matter of transportation. The map on the last page of my testimony shows that when you disperse these children across the State of Massachusetts, and certainly similar to my home State of Iowa, the cost of transportation soon comes to replacing the cost of residential care.

One of the other areas of concern which I would point out in my testimony is the matter of cost in terms of equipment for children. We recently deferred in our local board action costs for soundproofing and extending auditorium amplification for hearing-handicapped children. At the same board meeting the board voted to provide an off-street parking area for student parking in the name of public safety.

The choices that local boards are forced to make come out of cost. We had one local board member vote against the staffing of a program for severely retarded children in favor of a program for children with learning disabilities.

It was her contention that—and I think I am completely honest but I am paraphrasing her comments—that there was more economic return for the investment for learning disability children than there would be for severely retarded.

Those kinds of decisions are based on a concern about cost, and the basic intent of my paper is to point out basically this.

Much has been said about the excess cost programs for handicapped children being deferred because they are considered to be excessive. I would like to submit, gentlemen, that many programs in our public schools have expensive costs.

For many years the Federal Government has supported the expensive programs of vocational education, and rightfully so. These are expensive and they have excess cost figures. We do not ask in terms of the outcome that a vocational program will produce a skilled person, therefore we can put money into it. I wonder if we are asking about our handicapped children that they become a skilled citizen before we put money into it.

Programs for handicapped children have too often been compared with the average cost of all of education and therefore shown to be expensive. I would submit if we would just compare the cost of some handicapped programs we will find them less expensive than a program for other public school children.

In 1967 I made a study of our work-study programs at the secondary level. I found that our programs cost 90 percent of the average per pupil cost of our secondary school students. There was no excess cost for that particular program. If I had compared it to the cost with the vocational technical high school, it would probably drop to about 67 percent.

We afford programs for those for whom we have concern. I submit we have the financing in this bill of H.R. 70; we have a structure in which we can finance programs for the handicapped if we had the attitude that although the programs are expensive they are not excessive.

I would defer to any further questions the committee might have.  
Mr. BRADENAS. Dr. Selznick.

Mr. SELZNICK. Thank you, Mr. Chairman.

I am Harrie Selznick, a consultant in education, living in Baltimore, Md. I am a past president of the Council for Exceptional Children, a past president of the Council of Administrators of Special Education; former secretary-treasurer of the National Association of State Directors of Special Education, and am now serving as part-time executive secretary for the Council of Administrators of Special Education.

H.R. 70 is a bill which I endorse in the main. Possibly the strongest factor in the entire bill relates to the requirement of a State plan.

I would hope, however, that there be an additional requirement beyond the plan required of States so that each school district of the country might be equally required to submit a plan designating how children are identified, where children are, how they have need, how long they will be served; such plans to go to the State Department of Education in order that there be assurance that every handicapped child is provided with a program of education.

I think, in talking specifically to the funding aspect which I think has to relate to this State plan, one has to constantly keep in mind the basic purpose for which this bill is being proposed. That is, to make services available to all children.

I would suggest in consideration of the funding aspect that the money be earmarked and be directed toward a specific budget cost center to which all revenue to be expended for programs for the handicapped would be directed and from which all expenditures would be

made, in order that there might be accountability factors assessed as against the moneys directed to such services.

Let me mention a few basic principles which I think have to be considered in establishing a funding pattern for a program for the handicapped.

I think we would all agree all children are equally entitled to an opportunity for education. I think we are all agreed that the cost for educating handicapped children will in most cases be totally in excess of the cost for educating children who are nonhandicapped.

We would also find that program costs vary considerably, not only from school district to school district but among disability groups and within disability groups.

There was a question raised by members of the select subcommittee with regard to the cost for programs in the various States. I would suggest that were studies done in each of the States represented on the panel which preceded us, one would find there is a considerable range in program costs within the communities within the school districts represented by the individual States, and possibly as great a range among communities as one would find among the States.

Now, since there are these great differences in program costs and since diagnostic labels seldom describe the educational program or the learning location which will best serve an individual handicapped child, a method of funding ought to be developed which is not based on diagnostic labels.

Over the past 21½ years since my retirement as area superintendent for special education in Baltimore City, I have done studies on special education costs in a number of States across this country.

I have found that there is considerable question with regard to enrollments as one does investigation on the reports submitted by LEA's, local education agencies, and there is considerable question with regard to program costs, because not always are the same factors considered in trying to identify the cost for educating handicapped children in given communities.

I think this is rather obvious as one looks at the Illinois study which became available rather recently; as one looks at the New York study; at various studies in our own investigation. In one of the nearby States, we found, for example-----

Mr. BRADEN: Dr. Selznick, I fear I have to ask you again to allow me to run and vote and I will come back.

[Brief recess.]

Mr. BRADEN: Dr. Selznick, you were in the midst of a response.

I may say to the gentlemen who took part in the other panel, I will advise you Mr. Quie is not now going to be able to return. So again we thank you for your contribution.

Dr. Selznick.

Mr. SELZNICK: The last point I believe I was trying to make is that reports as submitted by local education agencies are in most instances open to question with regard to both enrollment and program cost.

Let me be specific. A request for total enrollment was made of a given school district in a State in which I was doing a study. On October 15, that school district said their total enrollment was 180,750. Three weeks later a correction report was submitted by the superintendent of that school district saying their enrollment was 186,500.

And 21 1/2 weeks later a third report was submitted saying enrollment was 189,500.

When I was asked what the actual enrollment of that school system was, I had to say it was some place between 180,000 and 189,000.

Now if one is that inaccurate with regard to total enrollment, how can one accept other cost factors?

A request was made of two school districts in this particular State for the cost for educating educable mentally retarded children in self-contained classrooms. A response was received from the chief fiscal officer of each of the two school districts.

Another office within the same Department of Education made a similar request approximately 1 month later of the same two school districts and the same two fiscal officers submitted reports; in one case there was a \$250 per child increase in program cost, and in the other instance it was a \$150 increase in the program cost.

Now here were two school districts submitting different figures on the same program cost to two different offices within a 1-month period.

So I am saying that one has to look with question, other than as a specific audit is done, on both enrollment and cost factors.

Quite possibly the most readily identifiable factor is any audit done on special education expenditures is the personnel cost. If there is the requirement made of a school district that it submit a listing of personnel with specific assignments, identification of the number of children, and the salary paid that individual, that is an auditable item and one then has a basis for looking at comparable costs in various school districts.

Now, since most handicapped children are able to make effective use of at least part of the regular grade program, the funding approach that is suggested ought not reward special class placement over integration with a regular program by increased funding support when that regular class program with supportive services may be more effective for a given handicapped child.

One other principle I would like to suggest with regard to funding is that the funding approach should not reward the school system when it is extravagant in the use of its educational dollars nor should it penalize the handicapped children who live in a school district which is financially limited.

Keeping those basic principles in mind, I would like to propose as an alternative to the funding pattern suggested in H.R. 70 one which is based primarily on the personnel factor.

If, as an extension of the plan which is required of each State department, there is the requirement that each local education agency submit a plan with a listing of all full-time personnel assigned to handicapped children, the assignment service load and salary paid that individual, it would provide the kinds of information necessary.

Additionally, there ought to be the requirement that each school district supply to the State department of education the average teacher salary for that district. In other words, I am saying one identifies the number of people employed to serve the handicapped and the average salary paid a teacher of the district in which that individual is employed. That will give—the average salary times the number of positions would give you the personnel cost factor for those in full-time responsibilities to the handicapped.

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I would propose that the personnel cost be shared by the Federal Government and by the State governments.

What I have tried to do is to "cost out" this particular program to give you an idea, to give this committee an idea of what kinds of moneys would be required for this pattern of service.

Initially I started with a small school district, a school district with an enrollment of 4,000 youngsters. If one would apply an incidence of handicap to that total enrollment of 4,000 and then estimate the numbers of salaried positions which would be required to provide the range of services I am talking about range of services rather than special classes or special schools—and if those could be estimated as one looked at the plan, an approved plan, the numbers of positions required for a pupil population of 4,000 were then applied to the total public school enrollment of the United States—something around, as I recall, 47 million pupils—and applying that same reimbursement pattern, I estimate the cost would approximate \$2 million, the personnel cost.

A shared responsibility at the 50 percent level would call for \$1 million in subsidy from the Federal Government to support the \$1 million provided at the State level.

I go back to my initial premise. Whatever the funding pattern, it has to have concern for children and it has to get money to where the children are. I am less concerned with a project approach where moneys go to those communities that are able to employ individuals skilled at writing projects and deny moneys to those communities which are not so fortunate, because then some children are denied the kinds of programs which they absolutely need.

Mr. BRADENAS. Thank you very much, Mr. Selznick and Dr. Gibson. Those are most interesting statements on the part of both of you.

I have a question I would like to put to each of you.

Just following what you said, Dr. Selznick, would you contemplate, in respect of the proposal you have just made as a means of determining the flow of funds—that is, linking the flow to personnel costs—that the recipients of the moneys could expend the moneys for costs of educating handicapped children other than for personnel?

Mr. SELZNICK. The cost factor which I have tried to identify is personnel cost only, and that relates to the budget approximation. In the studies I have done on indirect costs for educating handicapped children, the range has been from 23 percent of the budget item to 27 percent additionally. Beyond that, approximately 12 percent would be required for two other factors that were mentioned in some of the testimony this morning, such as home and hospital instruction and tuition paid for youngsters attending nonpublic schools.

Now, what I am suggesting is that the participation of the Federal Government be in the personnel factor because that is a solid identifiable item, with the State and local governments assuming indirect costs and other program costs.

Mr. BRADENAS. I understand what you are saying, but let me try out a variation of your proposal on you by analogy to the 1972 Higher Education Act program, now law, which provides for general institutional aid.

Mr. QUIGLEY and I, and Mr. Thompson, wrestled with this problem of how you determine how much money each institution of higher

education in the United States ought to get. If we tried to base it on need, we immediately found that we ran into shortcomings, deficiencies in the economics of higher education and in costing because we are not there, intellectually speaking.

I take it both of you indicate by your nods that you understand what I am talking about.

It would seem we have a similar problem here in respect to the education of handicapped children. Here is the way we solved, we hope, that problem, at least in the legislation. We linked the amount of money that each institution would receive to the dollar volume and number of recipients of Federal student assistance on that campus. The point is that this could be identified, such assistance could be identified, could be measured, and from a public policy point of view we argued that if the presence of a student on a campus is at least in part occasioned by the Federal assistance that he received, and if such a student costs more to educate than the money he brings with him, the Federal Government has some corresponding responsibility to provide those additional funds.

So, reasoning by analogy here, what we sought to do there, where we could not define cost properly, was to identify a linkage that we could measure.

Second, however—and here is where there is a distinction between what we did on higher education and general institutional aid, from what you have just proposed—we did not earmark the purposes for which the aid could be expended by the institution. The institution, though getting the aid because of a student assistance linkage, could nonetheless spend the money for any general purpose that it saw fit.

Would you not think that if we were to take the first half of your proposal and decide who gets how much money on the basis of personnel costs that we could then say to the recipients, "You may spend the money for whatever purpose you determine is necessary, whether it be for personnel cost or for equipment or some combination thereof or of other costs"—do you see my question?

Mr. SELZNICK. Yes, sir.

Mr. BRADEMAS. What do you think about that?

Mr. SELZNICK. I suggested at one point that all moneys made available for programs for the handicapped go to a specific cost center to which all revenue would be directed, whether it is Federal as I have suggested, and from which all expenditures would be made.

Now I don't know that one would go in and isolate the dollars that came from the Federal Government and say, "You may only spend them"—I don't know how you identify one dollar from the other ones it gets into that pocket. But what I am saying is that this represents a reasonable assurance that there is local input. And by the way, in one of the States I found that as State aid increased, local input was decreased.

In one State—and the Congressman is not here, although he is a member of your panel—one State in which I did a study, I found although no tax moneys were raised for the handicapped, under a special education millage levy, the superintendents were only using that millage for the handicapped.

So, what I am saying is, a separate pocket so one can measure, one can do an auditing on the moneys and see that they are expended for proper purposes.

Mr. BRADEMAY. Dr. Gibson, do you have any comments on that problem?

Mr. GIBSON. Yes, sir. In my statement I speak to a 3-year projection in which for the joint county school system for which I am director in Iowa I have 1 professional for every 30 students I want to serve. That is unique and it is individual to our needs because it takes into consideration the number of children, the kinds of handicaps and the individuals.

I think there can be that kind of relationship made that you are speaking of, that dollars, if not tied to the professional person, could be taken into some consideration of a ratio of staff people to numbers of children served.

There have been several studies that do identify this. They can be made.

I would just run through here quickly: For the 8,000 children my staff is 135. That is 1 professional person for 60 handicapped children.

I think you could, as you were saying, identify federally assisted children in higher education. You could identify federally assisted children at elementary-secondary level, and make some kind of financial adjustment.

Mr. BRADEMAY. Maybe I have not made my point clearly, because I don't yet understand. Here is my question. Let me put it bluntly. Our problem is: How do we figure out how much money to send to institutions that educate handicapped children, because we have this great difficulty with costs for all these reasons we have been discussing.

One possible way might be to link the Federal payments to the cost of personnel. It would be possible - because personnel costs are measurable and auditable - it would be possible to say that the moneys could be expended solely for the salaries of personnel.

Alternatively, one might say that once the moneys have arrived at the local agency they can expend the moneys for personnel, for equipment, for transportation, or for whatever other components of the cost of educating handicapped children there may be.

I was trying to get a judgment from you two gentlemen--assuming that that linkage made some sense, which appears to be true given the testimony we have received - would there be any objection to treating the money not as categorical but as general aid to be expended as the agency receiving the money saw fit, along the same lines as the higher education institutional aid?

Mr. GIBSON. I don't think it takes too great a stretch of the imagination to recognize that any dollars, once they come into an organization, are going to go out some way, and if a dollar sent in for a handicapped child goes to, let's say, a basketball coach, then presumably that dollar that was replaced for the coach also would have been used somewhere else for a handicapped child. There can be commingling of funds.

Mr. BRADEMAY. I am not talking about commingling of funds with general education. I am talking about using the funds solely for special education but allowing the funds to be moved about within that general field. Are we talking the same language here?

Mr. GIBSON. Yes. I would refer you to the statement. I believe on March 6, of Governor Sargent from Massachusetts and his reference to the chapter 766. It specifically states that funds will be sent to the

cities and towns and kept in a separate account and only expended as they are accounted for service to handicapped children.

Mr. SELZNICK. I would agree with the statement you made, Congressman. Now the reason I suggested that the personnel reimbursement--that is, the identification of the amount by using personnel salaries--be tied in with the average salary within the given school district, is to avoid the payment of excess salaries to special education personnel over other persons with the same training and experience. And also to rule out the possibility that a school district will purchase excessive expensive equipment that does not necessarily contribute to programs.

I think this represents a control. The strongest factor in H.R. 70, to my way of thinking, is still the requirement of a plan which identifies who, how, where, by whom, and when, and also with a possible requirement of a budget factor.

I think the requirement of the Commission to set up guidelines for the development of such plans is of vital importance because that gives you a control and a handle and a means for measuring accountability.

Mr. GINSON. I would like to point out one of the things--for 20 years in Iowa the easy way to handle this cost factor was we said the classroom teacher's salary plus one-third of that salary would cover the total expenses of handicapped children and they did it by that kind of formula.

Mr. BRADEN. What do you do in Massachusetts with 766, wherein you mandate special education and you talk about the cost of it. How do you determine the cost of it, given all the troubles we have had in defining costs here?

Mr. GINSON. That is one of the reasons I am there. We have not solved that problem yet, sir. Facetiously, there have been surveys. It is going to be determined under about 6 pages of their 108 pages of regulations to enforce 766, there are specific kinds of programs spelled out: Children in a regular classroom, totally, that goes out for a short period of time. That will be a reimbursable kind of program. A child who spends maybe 25 to 60 percent of his time in special education will be another degree. A child who spends total amount of time--it will be done by programs.

Mr. SELZNICK. One quick comment, because Bob has made several comments about his paper--I don't know if you have a copy of what I submitted or not.

Mr. BRADEN. Yes, sir.

Mr. SELZNICK. I received the invitation and I appreciate being invited to appear last Wednesday morning. I believe it was, and the suggestion was that your committee would like to have copies 2 days in advance of hearing, which would have been by Friday or Saturday.

When I was gainfully employed and had staff, that would have posed no problem. I should tell you that Wednesday afternoon and evening I pulled together testimony while my wife took the written sheets and tried to type so that we could get the testimony to the post office before midnight, hopefully to get it here in time.

I don't know that this is anyone's problem but my own, but I thought I should share it with you, and it represents a less than professional issue as compared with what I would have liked to send to you.

Mr. BRADEN: That is very good of you, Dr. Selznick, but you do yourself an injustice because your testimony and that of Dr. Gibson, as I think you have observed here, has been extremely valuable to us. Indeed what you have had to say may well point in the direction of one solution, and a very constructive one, to this problem.

Indeed, I am going to be sure to call to the attention of my colleagues who could not be here today the statements that both of you have made in your testimony, and I hope that when we get a little further on in marking up this bill, that both of you would consider sitting down with us more informally and talking about some of the same kinds of problems that we have been here discussing.

I am about half an hour, if not more, overdue at another meeting, and again I want to express my own appreciation to both of you for your splendid testimony.

We shall adjourn until Friday next.

Thank you.

[Whereupon, at 1:35 p.m. the select subcommittee recessed, to reconvene Friday, March 22, 1971.]

## FINANCIAL ASSISTANCE FOR IMPROVED EDUCATIONAL SERVICES FOR HANDICAPPED CHILDREN

FRIDAY, MARCH 22, 1974

HOUSE OF REPRESENTATIVES,  
SELECT SUBCOMMITTEE ON EDUCATION  
OF THE COMMITTEE ON EDUCATION AND LABOR,  
*Washington, D.C.*

The subcommittee met at 9 a.m., pursuant to recess, in room 2175, Rayburn House Office Building. Hon. John Brademas (chairman of the subcommittee) presiding.

Present: Representatives Brademas, Lehman, and Quie.

Staff members present: Jack G. Duncan, counsel, and Martin LaVor, minority legislative associate.

Mr. Brademas. The Select Subcommittee on Education of the Committee on Education and Labor will come to order for the purpose of further hearings on H.R. 70, a bill to authorize the Federal Government to pay up to 75 percent of the excess costs associated with providing educational services for handicapped children.

The Chair should point out this is the fourth day of hearings on this measure and that the legislation we are considering could prove to be landmark legislation for the approximately 7 million preschool and school-age handicapped children in the United States. Although some of us might take pride in the degree of Federal support which exists today, the Chair should point out we are today providing special educational services, from all public sources, to only 40 percent of the handicapped children of this country.

The Senate has also held hearings on similar legislation. We have heard in this subcommittee from parents, Governors, lawyers, educators, administrators, representatives of the Department of Justice and the subcommittee has received numerous letters and written statements from individuals and organizations all over the United States.

Without exception there has been support for this legislation. We are today pleased to have with us representatives of the administration, Mr. Charles M. Cooke, Jr., Deputy Assistant Secretary for Legislation in Education of the Department of Health, Education, and Welfare, accompanied by Edwin M. Martin, Associate Commissioner, Bureau of Education for the Handicapped, U.S. Office of Education, and an old friend of this subcommittee.

Gentlemen, we look forward to hearing from you if you will come ahead.

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**STATEMENT OF CHARLES M. COOKE, JR., DEPUTY ASSISTANT SECRETARY FOR LEGISLATION (EDUCATION), DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, ACCOMPANIED BY EDWIN W. MARTIN, ASSOCIATE COMMISSIONER, BUREAU OF EDUCATION FOR THE HANDICAPPED, U.S. OFFICE OF EDUCATION**

Mr. COOKE. Thank you, Mr. Chairman.

With your permission I will go ahead and read my prepared statement and afterwards we will be prepared to answer any questions the committee may have.

Mr. Chairman and staff of the subcommittee, I am grateful for this opportunity to discuss with you the problem of providing education to handicapped children. Accompanying me today is Dr. Edwin Martin, Associate Commissioner of Education, Bureau of Education for the Handicapped. I would like to discuss the general problem and comment briefly on the provisions of H.R. 70.

H.R. 70 is concerned with providing adequate educational opportunities to handicapped children in the public education system. Our best estimate is that about 6 million children between the ages of 5 and 19 have handicapping conditions which will require special educational services for at least some portion of their school years. Other estimates, gathered from State educational agencies or drawn from various sampling studies, show between 8 and 12 percent of all children as handicapped. One reason for the wide range of estimates is that there are many handicapping conditions, each of which may range from mild to severe in their impact on learning. For some children such as those with speech problems, reading or learning disabilities, or development emotional disturbances, the period of special intervention may be quite short. Mildly handicapped children with hearing or vision impairments, with orthopedic handicaps, or with mild retardation will require only part-time programs of special education within a regular school program. Other handicaps are, of course, vastly more severe and require intensive services over long periods of time.

Federal efforts to assist in educating handicapped children have grown rapidly over the last decade. In 1961, Federal education aid for the handicapped was limited to \$1 million research program, \$1.1 million for captioned films for the deaf, and \$14.5 million for training teachers of the handicapped. In addition, there was support for Gallaudet College for the Deaf here in Washington and the American Printing House for the Blind. In contrast, programs administered by the Office of Education in fiscal year 1971 under the Education of the Handicapped Act, the Elementary and Secondary Education Act, and the Vocational Education Act will make available \$249,417,000. In addition, 10 percent of the children in federally-funded Head Start projects are handicapped children. Federal investment in special institutions for the handicapped, including Gallaudet College, is \$24 million. The Federal Government now assists State and local agencies by providing about 12 percent of the total public expenditures for the education of the handicapped.

Federal programs have been a positive factor in strengthening the Nation's capacity to educate handicapped children.

An estimated 40,000 teachers and other professionals are enrolled this year in training programs which receive support from the Bureau of Education for the Handicapped.

More than 2,000 deaf and blind children, who were victims of the 1964-65 rubella epidemic will have full-time educational programming this year.

More than 480 programs enrolling 17,000 preschool handicapped children have been replicated directly from the 90 model preschool programs funded by BEH.

Fourteen instructional material centers provide wide-ranging dissemination of special materials for handicapped children have stimulated more than 300 new programs supported by State and local, as well as Federal funds.

We are now completing our initial analysis of the organizational and programmatic tasks which will be required under the provisions of section 504 of the Rehabilitation Act of 1976. With the chairman's permission I would like to submit a statement for the record of our activities in this regard.

This Federal effort at building capacity seems to be working well in complementing the \$2.4 billion effort for educating the handicapped provided by States and local communities.

The Nation is becoming more sensitive to the educational needs of the handicapped. Rapidly changing community attitudes about the States' responsibility to provide adequate services to educate the handicapped--as indicated by the great number of States which have passed laws mandating such services in the past few years and the growing number of court cases on the rights of the handicapped to an education--are such signs of this increased concern.

The central question before us is: What should the Federal role be? H.R. 70 suggests that the Federal Government would bear the major part of the fiscal burden. Among other things, this bill would require the Federal Government to pay \$600 a year per handicapped child age 3-21 without regard to the severity or duration of their handicap. An additional payment would be made to those States whose average support level (average per pupil expenditure) for the handicapped aged 3-21 relative to its average support level for all school-age children in the State, exceeded \$800. In these instances, the Federal Government would pay an amount equal to the "excess cost" about \$800 times 75 percent of the number of handicapped children age 3-21. It is estimated that in total these provisions would cost the Federal taxpayers at least \$4 billion annually.

We feel that such a massive shift toward Federal financial and administrative involvement in education for handicapped children, with its far-reaching implications for the heretofore complementary roles of Federal, State, and local governments, is extremely unwise and unnecessary.

The recent Rand study on the handicapped states:

Perhaps it is easiest to blame inadequacy of funds, but that is too easy an answer. Insufficiency of resources is a major problem, but mere funding alone will not solve other basic problems we find pervading nearly all aspects of the system. The complexity, lack of control and disorganization of the system currently delivering services to handicapped youths denies efficient and effective operation. Inequities in gaps of service deliveries abound and not enough information is available to manage the service system effectively and deliver the services needed.

First of all, our experience with other social programs has made us very conscious that a rapid infusion of dollars into any sector in a short time period is likely to be an ineffective and inefficient investment.



We need to ask the hard question: Do we have adequate capacity to absorb so rapid an infusion of funds effectively? Under H.R. 70, we would run a great risk that the enormous increase in Federal effort would be wasteful.

Second, we believe that such a massive infusion of Federal dollars and a drastic change in the Federal role from one of "capacity building" to general fiscal support is not really required. The States now can anticipate an expanding fiscal cushion which can be used to finance the expected demand for increases in expenditures for educating the handicapped. An estimate by the well-respected American Enterprise Institute shows that States and local governments will have a \$19.8 billion budget surplus (on an NIA basis) in 1975 and a \$26 billion budget surplus by 1980. This growing fiscal cushion, partly produced by declining school enrollments which provide great fiscal relief to the States because education accounts for a significant share of the States' budget, should give the States the resources they will need in the coming years to adequately provide for educating the handicapped.

We believe that the interests of handicapped children would be best served by a strong Federal role in building the capacity of our educational system to deal with special problems. If you ask, which is most important, fiscal relief for the States or breaking new ground in developing new kinds of effective service to the children themselves, surely the latter must have priority. The States have now the basic responsibility for supportive services which we are stimulating through the State grant portion of the Education of the Handicapped Act. The Federal Government's primary role should be to bolster State and local efforts with balanced research, demonstration, and training programs, in order to enhance the Nation's ability to intervene in a timely way and with the most appropriate technology and curricular aids.

It seems to us that the Federal Government should participate in providing supporting services only where a handicapping condition is extremely severe, and or unevenly distributed so that individual States could not be expected to mount adequate and viable programs.

It is within this articulation of the Federal role that the administration will be transmitting very shortly a bill to strengthen and consolidate the discretionary authorities of the Education of the Handicapped Act into four broad titles: (1) Resource demonstration, (2) innovation and development, (3) professional development, and (4) centers and services for severely handicapped children. These authorities would provide the open-ended flexibility necessary for the Federal Government to do its part.

The new part entitled "Resource Demonstration" would authorize the Secretary to make grants or contracts to provide for the dissemination of materials and ideas based on existing techniques and technologies for providing educational and related services to handicapped children. This part would establish a special emphasis for programs aimed at the early childhood education of such children.

The present research and development authorities in the act would be placed into a single authority entitled "Innovation and Development." Under this part, research efforts relating to the education of the handicapped would continue to be administered in the Office of Education rather than NIE because of the close relationship between the administration and research components of this program.

Training under the amended act would be funded through a new authority entitled "Professional Development." As that title implies, the emphasis of this part would be to upgrade the qualification of personnel, including paraprofessionals currently working with handicapped children, and to encourage experienced regular teachers to acquire the additional skills necessary to work with handicapped children. The new authority would also emphasize activities to provide professionals to serve handicapped children living in geographical areas or having particular disabilities with respect to which there exists a critical need for additional personnel.

A fourth authority, focusing on services for a particular population rather than on developing model programs, authorizes grants for "Centers and Services for Severely Handicapped Children." Such children would be defined as those who are deaf-blind, multiple handicapped, severely retarded, or seriously emotionally disturbed. This new part would expand the present authority in section 622 of the act to serve not only deaf-blind children, but all severely handicapped children. We are recommending a special focus by the Federal Government for these groups due to the economies of scale which would be realized in developing programs to provide the extensive range of costly services required by this relatively small target population.

The definition of "handicapped children" would be expanded to include children with specific learning disabilities, so that programs for them could be funded under other authorities in the act rather than just under part G, as it is in the present law.

We are also proposing consolidation of the administrative responsibility for the various handicapped "earmarks" in current Federal education legislation; that is, the Vocational Education Act, Public Law 89-313, and title III of the Elementary and Secondary Education Act into Part B of the Act, the State grant portion of our draft bill. If we are to meet the problems of unnecessary institutionalization and inappropriate vocational education for mildly handicapped children, the problems created by targeting of funds for specific programs, we must change the administrative responsibility for them.

The approach contained in the administration's proposed draft bill represents a sound approach to Federal efforts in the area of education of handicapped children which is consistent with the need to simplify the Federal grant process and to provide greater encouragement of State and local initiatives in dealing with various social problem.

We believe working together with Congress we can improve the overall national system to meet the needs of handicapped children. We all acknowledge there is much about the conditions of handicapped children and their distribution throughout the educational system that we do not know. Better data is crucial to the improvement of our national system. We know from the questions posed to the Commissioner of Education by the gentleman from Indiana and the gentleman from Minnesota that you are also aware of the huge gaps in our knowledge of the educational system for the handicapped. A recent study completed for HEW by Rand, as well as the analysis of legislation and litigation by the Council for Exceptional Children, and studies by the American Speech and Hearing Association and others begin to answer some of your questions, but to adequately answer these critical questions, an intensive analysis is needed.

To that end we are establishing a high level group to study carefully the Nation's problems for the handicapped and to define an appropriate Federal role for the future. The study group will develop information necessary to planning future service patterns for the handicapped.

To complete the data collection and analysis effort, the Department will commit the needed funds to the work of the study group and a report to the Secretary of HEW will be delivered within 18 months of its establishment and will be shared with the Congress. A small staff to assist this study group will be formed to help us in this activity. Completion of this important task during the extension of the proposed Education for the Handicapped Act is vital, both to the States and the Federal Government. Complete analysis of State efforts on behalf the handicapped will enable them to identify weaknesses in their information system which may interfere with service deliveries. The Federal Government will be able to plan and restructure, if necessary, its role in stimulating State and local efforts in special education.

In summary, the Congress and the executive branch have worked cooperatively in the last decade on behalf of handicapped children. Before enacting legislation such as H.R. 70, which is a profound shift in Federal responsibility, we feel a careful analysis of the current role played by the various governmental agencies at all levels is necessary. The legislation we are proposing will provide a chance to continue our current program. At the same time our proposed study group will analyze all of the Federal programs and examine in depth the question of all services for the handicapped. Education for handicapped children and related health rehabilitation services will continue to be a major concern of the Department of Health, Education, and Welfare.

Thank you very much, Mr. Chairman.

Mr. BRADEN: Thank you very much.

Dr. Martin, do you have anything to add?

Mr. MARTIN: No, sir. We are ready to answer questions.

Mr. BRADEN: Mr. Cooke, you state on page 4 of your statement that "We," referring to the administration, "feel that such a massive shift toward Federal financial involvement in education for handicapped children is extremely unwise and unnecessary."

Of course, you are referring to the bill under consideration, H.R. 70, and then you go on to assert you take this stance, again, to quote you, you say, "Our experience with other social programs has made us very conscious that a rapid infusion of dollars into any sector in a short time period is likely to be an ineffective and inefficient investment."

Now what is the basis of that assertion?

Mr. COOKE: Well, I would think it is a general history of the enactment of various social programs that began during the period around 1964 where we had considerable effort in the Congress to develop new programs. None of these, I would hasten to add, am I attacking on the basis that it was wrong to do. What I am suggesting is when we have a massive infusion of dollars into, let's say, OEO-type programs or medicaid or other areas, that it took a while, and in some cases it never happened, for the system to be able to handle that money in a way that was both responsible and effective.

In this particular case, in dealing with the handicapped, we are dealing with a system where we know we have considerable shortages both in the way of teachers and professionals and in structures to handle the problem. The point I am really trying to drive at there is that if we threw a lot of Federal money in there without the organizational structures and the professionals to back it up, we are liable to not get the results that I think you desire with this legislation.

Mr. BRADENAS. Do you see anywhere in anything you have heard me say or anything in this bill that suggests we want, to quote you right back at yourself, to "throw a lot of Federal money in without appropriate organizational structures or appropriate professional personnel"?

Mr. COOK. No, sir, it is not in the bill, but I think the implications of the funding requirement there, in which you have in that amendment, somewhere \$6.3 million to spend, and we don't have the teachers right now that we could get out there to serve those children and we won't have those teachers for some period of time.

If I might give an example, Mr. Chairman, I have a child with a learning disability. In the State of Virginia, where I live, they have passed a law now which mandates that the local public school system must provide educational services for learning-disabled children to give them an equal educational opportunity. My child, because of the state of the school system in Virginia, has to go to a private school right now and there is no place else she can receive the services necessary.

The problem was that when the law was initially enacted, it looked like the State of Virginia was going to insist that all of those children had to be provided services in the State of Virginia beginning in July of 1974, 1 year after enactment of the Act. I fought it vigorously as a parent because I knew there was no capacity in the school system to provide the necessary services and if they mandated that I had to put my child in the public schools, any assistance we could get with regard to children in the private schools would be immediately lost—the private school would fold; so, one, I would lose the one resource I could use; and, two, I wouldn't be able to get the kind of services my child needed simply because of shortages.

Mr. BRADENAS. How much money is being asked for teacher training in this field?

Mr. MARTIN. Approximately \$38 million this year, Mr. Bradenas.

Mr. BRADENAS. Is that an increase over the current fiscal year?

Mr. MARTIN. No, sir, it is approximately at the same level.

Mr. BRADENAS. Then that is a real decrease in terms of real income in view of the enormous inflation we have been experiencing, is that not correct?

Mr. MARTIN. Yes, sir, I think, if you were to attribute some of it to the cost of living, it is difficult to know, however, if the funds would be spent in that same way.

Mr. BRADENAS. If you asked for the same amount of money for the coming fiscal year as you have been spending in the current fiscal year, given the substantial increase in cost of living that is clearly a decrease, in real terms as the economists say, in the money you are asking? Is that not self-evident?

Mr. MARTIN. Yes, there is one counterbalancing trend which is that the enrollments tend to be going up in the special education area, as students reroute themselves into this field in a greater number, so while there is some true decrease in support in real dollar values, we don't anticipate fewer students will be trained in special education programs.

Mr. BRADEMAs. The reason I bring this up is that the administration's posture in this respect is totally at odds with the protestations of Mr. Cooke about his concern that we have inadequate personnel if we are going to effectively implement programs of special educational services for handicapped children. I must say I am also, in all candor, not surprised, Mr. Cooke, to find you really weren't terribly specific when I asked you to justify your assertion that "Our experience with other social programs has made us very conscious that a rapid infusion of dollars into any sector in a short time period is likely to be an ineffective and inefficient investment."

Don't you have any more specific studies or indication of the kind of criteria you use in HEW to judge efficiency and effectiveness than simply that rather generalized sweeping, in my view, wholly unscientific statement?

Mr. COOKE. I suppose, I could probably dig some up, Mr. Chairman, I don't have a lot of backup material with me right now.

Mr. BRADEMAs. I doubt it very much.

Mr. COOKE. I have merely 25 years of experience in the Federal bureaucracy and having watched a lot of programs back and forth in various areas of Federal Government and one of the great difficulties we have in Federal Government is developing efficiency and effectiveness in getting measures of accountability, developing systems that work—due to the complexities of the entire structure—so maybe it is very general and maybe it is very vague and maybe it is not worth much, but it is something, that is very true, as far as my experience has been.

Mr. BRADEMAs. Well, that, in all candor, and I hope you will understand I am not being personal, is not a very impressive response. You see, I get rather upset when I hear these sweeping assertions out of the administration's spokesmen that we have thrown a lot of money at these programs and we know they don't work. Then when we press you to tell us the standards, the criteria that you use to make such sweeping assertions, we find that you retreat into this kind of overly bland generalization or observation from personal experience.

We are talking about programs that involve many thousands of human beings, and millions and hundreds of millions, and in some cases billions of dollars, and I think you know very well I have been among those who have been pressing for much more objective efforts to evaluate and assess what we are doing. I would most respectfully urge that a bit of humility would be in order for the administration in making such assertions because I just don't think you can prove what you say.

You know that, Dr. Martin, for you are a professional in this field, and we really are not as advanced as I think most of us would like to be in our capacity scientifically to understand the effect of Federal intervention in human services programs. So when you make this kind of assertion, it only sounds as if you are a cheerleader for the Office

of Management and Budget rather than expecting us on this committee to take you seriously in any scientific way.

If you want to respond to that, I would be very glad to have you do so. I just wish we would have less ideology out of you people in the administration and a little more science. Do you have any comment on that?

Mr. MARTIN. I think I have some comments on it, Mr. Chairman, with regard to the present bill we are considering. It seems to me one of the difficulties we have with that particular bill, as well as the difficulties created by the letter that you and Mr. Quie sent to Dr. Ottina, is that our capacity within the system to be able to answer those questions which are extremely important with regard to the legislation you are considering is very limited.

So that we are faced with, as you are, equally, the knowledge that there is a problem out there, we know that some things need to be done to correct those problems, but we don't know the dimensions of problems. We don't know the target population and can't identify them in the categories in which they need to be identified, nor can we identify the resources that are required, both fiscally and professionally, to deal with this real problem. You know, one of the ways to deal with the problem is to attempt to get accurate answers to the questions which you and Mr. Quie quite rightfully have raised with us. Indeed, when we deal with these issues, when we attempt to provide the answers to the problem of education of the handicapped problem in this country, we are dealing from a basis on which we understand the dimensions of the problem, what resources are required to provide the answers if we can get better data we will have a basis whereby the differences between the administration and the Congress with regard to who has what role to do what could be argued out on a much more rational basis.

Mr. BRADEN vs. Well, I would have thought, if that is your posture, you would have been in here vigorously examining any efforts to put more money into training, because you have to have trained people in order intelligently to go about coping with the kind of problem you just enunciated. You don't think answers to these problems are going to drop out of the sky, I take it?

Mr. COOKE. No, sir, I don't think they are. I think basically we need to mount an intensive study effort over the next 15 months to get the answers to your questions and our questions, too, which will give us an understanding of the dimensions of the problem. As Dr. Martin has pointed out, for instance, we know generally but not specifically that there have been increased enrollment in the special education teachers being trained in colleges of the United States today. But can we categorize those by what area they are getting special education training in? The answer is "No, we don't know that." So to say that we should immediately begin to put more money into teachers training because we understand there is a shortage of teachers, again, my problem with that is to try to deal with that to see if we can identify the problems. What area is it in dealing with the very complex area of education for the handicapped that we need to focus our training dollars on?

Mr. BRADEN vs. Why are you just getting around to making a study and announcing it to us in March of 1974? This bill has been intro-

duced for quite a long time now. Did you just suddenly stumble upon this problem down in HEW?

Mr. COOKE. No, sir. I don't think so. I think it has been a matter of developing, within the administration and the Department, a clear understanding of the absolute need for this by all parties involved and we have finally gotten there.

Mr. BRADENAS. The bill was introduced January 1972, and this is March 1974, and you know, as I said before, we only get elected for 2 years.

I am not impressed by the slow responsiveness down there and I wonder why, in view of the Rand Study, for example, you think you need another study?

Mr. COOKE. Well, the Rand Study helps illustrate very well the gaps in our knowledge. Many of the questions that have been asked by you and Mr. Quie are unanswerable through the Rand Study. Furthermore, the clear indication of the Rand Study is that there are enormous data gaps, particularly in State and local educational agencies, and that we, in order to provide the kind of data you have requested from us, are going to have to go to the local education agency to get it, because that is the only place it can be found. It is not in the State agencies.

Mr. BRADENAS. You know, Mr. Cooke, if we were to adopt that rather curious line of reasoning, we wouldn't have an Elementary and Secondary Education Act and a Vocational Rehabilitation Act on the books; indeed, any Federal education legislation on the books. Because in any of those fields there are great areas where we do not know all that any of us would like to know, so I must say that I regard that kind of response as really a pretext for inaction and low investment rather than as a really intellectually justifiable argument for more study.

Lord knows, as you are aware, I am the sponsor of the National Institute of Education, so I am strongly in favor of finding out more. Indeed, it is because I don't think we know enough about compensatory education, I joined with Mr. Quie to urge a study of compensatory education by NIE, but don't think we need to end ESEA tomorrow until we find everything we need to know about human behavior at that level.

Mr. COOKE. Yes, sir, and if I might respond for a second, I am not suggesting we eliminate the Education for Handicapped Children Act or what we have of vocational education or title III and so on for the handicapped, but what I am suggesting is the same effort that you and Mr. Quie have so rightly insisted we need—a study of the questions on the handicapped, similar to the actions you have taken in the markup of H.R. 69 asking for the study on compensatory education, and indeed I couldn't agree with you more on those, and I would think that the administration has not suggested nor would it suggest we should eliminate ESEA.

We are saying we ought to correct it. I am not suggesting we eliminate the handicapped programs, but suggesting before we go off into a new and vastly expanded program, we ought to know a little more.

Mr. BRADENAS. Let me ask a couple of questions before yielding to my colleagues, Mr. Cooke. You indicate your judgment that the passage of this legislation would be extremely unwise, and yet I note that



the evidence at least that has been brought to the attention of this subcommittee is that most of the people who have expressed themselves on this problem from the States feel very strongly that they need some Federal support for programs rather than more capability building, to use your language.

I think you were here when the Lieutenant Governor of Maryland, Blair Lee III, told us earlier that the States need, to quote the Lieutenant Governor, "real tangible help and not more research or capability building."

Then, if you look at a recent poll by the education commission of the State, or State Governors, legislators, and education officials, school finance and education for the handicapped are at the top of the list of urgent issues in education. Of the 33 Governors responding, 51 percent picked services to handicapped children as the top educational concern.

Then, I look at your statement that you think the Federal Government should bolster State and local efforts, and yet you know as well as I do that in State after State, State officials have had to be dragged kicking and screaming into the courts by the parents of handicapped children in order to be sure that those children have at least judicially a right to education. What kind of bolstering or what kind of State efforts are going to be bolstered? What did you seriously have in mind in that respect?

Mr. COOKE. Well, as I tried to say in the statement, it seems to me that we are now at the issue, the critical issue, of what is the role, as I said in another hearing before another body here, the issue is not that more money is needed, but whose money. It seems to me that is the issue we are confronting right here.

Your H.R. 70 would suggest that the bulk of that money, indeed, should be Federal, that some \$4 billion or approximately 75 percent of the cost of educating handicapped children is a Federal responsibility. My understanding of the local school systems and of the way that we finance schools in this country is that the burden of school systems is on State and local fiscal responsibility. If that is the case, it seems to me that, in the court cases, for instance in the State of Pennsylvania and elsewhere, they are now mandating that the States must indeed pay those, and I think the move across the United States is to understand that this is a requirement of the local school districts.

While we do not have a Supreme Court ruling on this issue yet, I suspect we will have one rather soon. Therefore, it seems to me that if it is mandated that the local school districts must provide equal educational opportunity to all children, be it bilingually handicapped or by virtue of some physical or mental disabilities, that we run the risk in this bill and other bills that are being considered before the Congress of supplanting some State and local money with Federal money, and I, as you well know, do not agree that that is the Federal role.

Mr. BRADLEY. Let me make two points in that respect, Mr. Cooke. First of all, to quote the Rand document to which reference has been earlier made by you in your statement and by me in my questioning, I quote from page 94 of it:

State and local governments play the dominant role in special education with the Federal Government supplying only 12 percent of the funds targeted specifically for the handicapped's use. Federally supported programs are numerous

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and serve a wide variety of functions, the main one being innovation and stimulation, which accounts for about half of the Federal expenditures.

Because of this low level of financial involvement, the legislative and executive branches of the Federal Government do not have great leverage for inducing state and local governments to increase the quantity and quality of special education provided.

So all of this business you are giving us about bolstering State efforts, I must say I just think, in any scientific, objective sense, holds very little water.

The other point I would make, and you were here when he said it, is that the Assistant Attorney General for Civil Rights, Mr. Pottinger, told this subcommittee, "When a right is denied, there can be no cost excuse for the denial."

Now, I should have thought that you and HEW would pay some attention to what the Justice Department is saying, because Mr. Pottinger went on to make clear if education is a fundamental right, the cost of educating the handicapped should probably be shared by State, local, and Federal Governments.

Dr. MARTIN, I have one question for you. This is 1974, and it has been quite a long time since, as I recall, in 1967, we created the Bureau for the Handicapped, and we thought that among the Bureau's responsibilities would be a duty to provide the information which Mr. Cooke now tells us all of these 7 years later, requires a study—a study, of all things! What have you been doing down there on these matters?

Mr. MARTIN, Well, I think the kind of information you are asking, Mr. Brademas, is more relevant to the kind of legislation that is proposed than to the kind we now have. For example, the toughest questions to answer are the costs of education by category of child, by type of program in a special class—for instance, full-time versus part-time instruction—and a number of very specific questions that are only answerable by the development of some kind of a common accounting system at the local education agency level.

Mr. BRADEMAS, Do we have to wait for hearings on this legislation in 1974 as a professional in this field to learn that question?

Mr. MARTIN, No. But it wasn't—what I guess I am saying is we really had no basis for attempting to gather that kind of information or to impose it, since there was no Federal role that would be relevant to it. We gather information naturally on the programs where the Federal Government is now involved, how many children are involved in the programs, what ages they are, what kind of services they get, and so forth.

Mr. BRADEMAS, Is it necessary to have a Federal Government in order for professionals in the field of education of the handicapped children to reflect on problems such as "uniform costing" and "uniform vocabularies"?

Mr. MARTIN, No, we have funded through the State of Illinois and with the Ernst & Ernst accounting firm a model for a cost accounting system, but whether or not 16,000 school districts will decide to adopt it or whether we could impose it on them is another question.

Mr. BRADEMAS, That is not the question I asked you. What I want to know is not a question of imposition of Federal standards. What I wanted to know from Mr. Cooke and from you, as a professional in this field, is, why are you now, in 1974, telling us that we should not legislate in this field because you don't know as much as you should?

Some of the kinds of questions that you are raising, it seems to me, could quite sensibly have been expected to have been the objective of a thoughtful study over the last several years.

These are not far out questions, but very fundamental questions. I now have the perception when you tell us—and I am being blunt about it—you need a study, the reaction you get out of me is, "I don't believe you." And the reason I don't believe you is because any rational responsible person with jurisdiction in this field would have been working on some of the kinds of problems to which this legislation is addressed.

Therefore, my response, and I put this up as strongly as I can, to give you a chance to shoot at it, is that you really are not interested in spending any money on these programs, that all you are giving us here is a smokescreen behind which to hide some ideological OMB-induced hostility to putting money into education of handicapped children.

This is my view of an ideological response on your part at a time when we have seen this increasing pattern of court decisions holding that handicapped children have a right to an appropriate education.

Mr. MYRICK. There is still a different point, and I think the Chairman knows I strongly support increased Federal help for handicapped children and we can separate that from the specific data request. First, let me start by saying we don't have all data we should have. This has been a continuing problem from my point of view and it is one that I think we are making a little headway on. Part of the reason we don't was because in the past I think we had a situation where there were so many of us who were operating Federal programs who were asking the States for information and so many diverse kinds and sometimes redundantly, that there was a kind of rebellion on the part of the States with regard to supplying some of this information and various task forces were set up and OMB was put under our pressure to cut it down.

The net effect of that was that for the last year or so we have had a moratorium for all practical purposes on the colleagues of certain kinds of data.

Now, what I was meaning was that the kind of information you are asking now is necessary if the Congress is going to run an excess cost kind of a program. I think the committee has already learned that teacher salaries vary so widely, the cost for a given unit of special education, let's say a class for retarded, varies very widely. In order to make sense out of that highly complex pattern, you would have to have a very fundamental common accounting system that would touch every school district in the country.

We have not done that before for these basic reasons, that is, we were not involved in a program that was relevant to every school district in the country. We had no real rationale for asking them a lot of data about non-Federal programs.

Mr. BRADENAS. We are trying to give you one.

Mr. MARTIN. Then we do need this kind of data to have this kind of Federal program, no question about it.

Mr. BRADENAS. You know, Dr. Martin and Mr. Cooke, first, you tell us that it is very dangerous to pass a program like this because we don't have enough personnel to implement it. Then when we press you, it is quite clear you are not asking for more training money for per-

somed. Then you tell us, don't pass this kind of program because we don't have enough information to carry it out intelligently and then we asked you, "What have you been doing for the last 7 years to gather the information" and then you come back and say, "Oh, we are going to have a study."

Have you started this study yet?

Mr. COOKE. No, sir, we have not started it yet. We got your questions last week. It seems to me, Mr. Chairman, in all fairness, one of the issues we went through for the past 6 months with regard to the implementation of the Elementary and Secondary Education Act, with which you are so intimately involved, is the title I formula and it is one that you are intimately engaged in at the present time. One of the difficulties we have had with the formula all the way through is attempting to get at cost of instruction. It is not cost of instruction for the handicapped, but cost of instruction for just normal children.

We don't have that and nobody else has it. There is no way to get it at the present time. To get it we have to mount up a study to try to figure out what costs of instruction are. Additionally, another problem is cost of living. We have no way at the present time within this Government or any branch of it I know of whereby you can get regional cost of living.

All of these factors are not just involved in the questions you have asked, but they are involved in the question of what data base we have in the Federal Government and its gaps and so forth.

Part of it is because the perception of what the Federal role is really didn't change until 1965 and it is still in the process of evolving.

Mr. BRAWLEY. I just make three points before yielding to Mr. Quie.

One, with respect to the matter of the need for more knowledge and information, I am sure you won't find disagreement on this committee. It was, in all candor, we on this committee who first raised this matter. We were asking these questions from the very start on this subcommittee. In my judgment you should have been looking at these matters long before a congressional subcommittee hearing prodded you into some sensitivity. But this is not the first time we have seen that sequence of events in this committee.

Second, I call to your mind the dimensions of something with which I am sure Dr. Martin would be familiar, namely, an area known as evaluative research. That is to say, realizing you don't know all you would like to know about a particular program you nonetheless move ahead using the best judgments you have, with very careful evaluation of what you are doing, in order to be able to improve and refine as you go along. Certainly it ought to be obvious in this respect we know enough at least to conclude that it is better to put some money into the education of handicapped children than not to do so. That would seem to me to have been a commonsense observation, not requiring 18 months' study.

Third, I think it revealing, Mr. Cooke, that you have not made an indication that, even if the study to which you refer produced the conclusion that there is a need, you believe that there is a role for the Federal Government to help meet that need. That I regard as quite significant.

So I try to put my observations without personal malice, as you know, but only to say that I have not been impressed by the thinness

of your arguments here today. I think you ought to go back to the drawing boards and take another look at this one because I don't think Governors are going to believe you. I don't think State legislators are going to believe you and, most important, I don't think the parents of handicapped children are going to believe you.

Mr. Que?

Mr. Que. Mr. Cooke and Mr. Martin, I got in a little late and didn't witness all of the activity before I arrived, but I think you do put your finger on a point that is important, that this subcommittee really doesn't know exactly which way it is going to go. The approaches that have been suggested by the chairman, Mr. Brademas, in his bill, and Senator Williams, while differing some from that bill, are the ones that are being considered. It is kind of a generous proposal of the Federal Government to go to that extent and I doubt that we can find a soul amongst special educators who would believe that we could pass either of those two bills, or a combination of the two, and have that amount of money appropriated in the next fiscal year. That isn't about to happen.

We have talked now for a number of years on promising something that can't be produced and I hope we don't have to go through that. What I am mostly concerned about is that we work on this legislation, that we develop legislation that we are certain of where we are going.

Now, there are some things you have to embark on without knowing fully. I will give you an example. In 1964 we finally made the decision we would begin providing grants to college students. We drafted it in a way that we could learn from it.

We learned from it and changed the legislation. It was interesting how really little we learned and the problems we are really running into now. Of course, in our drafting first and administering a new program that we thought, and the gentleman from Indiana, Mr. Brademas, and I were in agreement on the basic educational opportunity grants. There was not any difference there. But we will be moving further on that legislation.

What I am trying to say is we never know. Now, you can't have the studies and find out everything before you even embark on it because some of this is learned by experience. I think we did right in 1964 by putting together a less ambitious student grant program than some would have suggested in order that we learn something from it. We have put together a very ambitious basic educational opportunity grant program and it has taken a while to get the Congress to agree to fund that.

I think some of the problems would not have been as great had it been fully funded.

Now, there are a number of questions I have as to what the Federal responsibility is because there have not been any court cases that the Federal Government had to provide for handicapped children in special education. The Pennsylvania and District of Columbia case said that those governmental entities in the State of Pennsylvania and District of Columbia were required to do it. I doubt there would be any court case that would say the Federal Government had to. So we then have to determine "what is the Federal role" and "how do we provide it?"

Now, there is one area where I think there is a Federal role and, Dr. Martin, you are familiar with my conversations with you concerning the St. Paul Technical Vocational Institute providing a program of training for translators for the deaf and some deaf students that come from various parts of the country. There are some programs that it is not even possible, because of the numbers of students that will be benefited, that you could run one for each State.

There are other areas that that exists in also. To what extent do you think that exists in the area of the handicapped, just as I cite the one of the deaf in St. Paul which serves a large area?

Mr. MARTIN, I think most of the programs that the Congress has authorized in the past are based a good bit on those kinds of assumptions. For example, the teacher training program meets not only within-State supply, but provides leadership personnel across the country. So a university such as the University of Minnesota, from which you have some witnesses who will testify later, or the University of Indiana, is providing leadership people across the whole country and it wouldn't make much sense, I think, probably to have those supported solely on a within-the-State need basis.

At the same time, research certainly crosses regional lines. We have had a good deal of success with the development of model preschool programs, picking preschool as an area which was not well developed within any State and in which there was some good research support and the results there are enormously encouraging.

Research studies and model projects showing—well, the most exciting thing to me is the number of children who become handicapped are so much fewer. For example, in a study where we were talking to a project investigator last week in Wisconsin, a group of children who would have been expected to be handicapped, at a high rate, and, in fact, in an untreated population a third of the children were later enrolled in special education programs and of those that had 2 years of preschool program only 13 percent were later enrolled in special education programs.

So there is an enormous savings of 20 percent of the children in this population who do not go into special education at a later time, say in the third or fourth grades.

There are also, and we speak to it in the bill the administration will submit economies of scale in dealing with children of low incidence of occurrence, the kind of handicapped that have low incidences such as—deaf-blind, autistic children, and children with multiple handicaps. Here one State may not really have enough such children to develop a comprehensive program so we have encouraged regional programming or as in some instances with the rubella epidemic, parts of the country were much more severely hit than others.

Along the coast, wherever people tended to come into transportation centers there were many more cases than in more isolated parts of the country. So when there is inequity of distribution of a problem, there may be a rationale for Federal intervention there. Well, you can make one large extension to the problem of educating handicapped children which may meet the criteria you raise, and that is there is an enormous variation within and between States in the numbers of handicapped children served, so that if you live in one part of the

country you may be three or four times less likely to find a special education program for your child than if you live in another.

There is at least a question raised as to whether that kind of inequity is a Federal concern.

Mr. QUIN. Let me go along that line and ask you, have you found that the percentage which is mentioned, I believe, in your testimony of 8 to 12 percent of the students as being handicapped, that that percentage exists all over, or just as there is no continuity of the number of handicapped that are served in each State, is there also a difference in the percentage in various areas of the number of handicapped?

Mr. MARRIS. It is a remarkable statistic in this way, in that it is almost a folklore statistic, it has grown out of so many various experiences of people. In some instances a local school district that was running a very good program counted up their kids and came up with roughly 10 percent and in others there were research studies conducted that sampled some populations.

For example, the elementary school survey asked the principals of schools to estimate the numbers of handicapped children that were in their schools and to report on it. Now, principals would not ordinarily have available to them our usual statistics and would be less likely to feed that back to us and again that study came up with between 9 and 12 percent on a national basis.

So my feeling is that the range is, in fact, a pretty real range depending on how you are going to talk about certain handicaps. Now where we find variations are in populations which have other characteristics, for example, economically disadvantaged, and it is very difficult to sort out on the kind of tests that are available, whether a youngster who is several years behind in academic functioning and who measures on an IQ test about 75 IQ, whether he is a retarded youngster in the sense that people used to think that a retarded youngster was one who had a relatively fixed ability.

We have moved a long way away from that concept of thinking that retardation was fixed. So where you have socioeconomic factors that result in a reduced educational response, or reduced response to predictions of educational achievement, which is really what an IQ test is, then the numbers can be quite large and you might find more children who are identified as retarded in a population like that than you would somewhere else.

This is, in fact, a concern to the special educators and to others, because it has some dangerous implications to it. I don't think it is of benefit to a child to be identified as retarded. If we could provide him with special kinds of programming he needs without having to identify him in that fashion, it would be better. And special education programs, by the way, are finding that they can move away from labeling, because you can identify, administratively, a group of children under the law does not mean you have to operate your programs on that basis and you can, in fact, do it and many schools do now. They don't have a sign over the door saying "This is a retarded kid," but it is one of the reasons why I would have to say while I think the overall estimate is very good, the numbers of children in a given situation where economic factors and poverty have been at play may tend to inflate the number of kids who are going to act very much like handi-

capped children and require education intervention as handicapped children and that may be as many as 15 percent, let us say, maybe more.

Mr. QUÉ. What you say is the folklore figure we have been using for years and years of 10 percent may not be accurate in each school district.

Mr. MARTIN. That is true. It may not be, although it tends to come up more than any other figure whenever people count and they keep coming up with the figure of 9, 10, or 11 percent and it holds up remarkably well in a lot of independent observations.

Mr. QUÉ. Is that also affected by the folklore like "the 4-minute mile"? A number of people have run a 4-minute mile after that. What you are saying, if there is a greater incidence of rubella in a part of the country, then the handicapped must exist in a greater part in those schools. You say there is a greater incidence of children who are at least defined as mentally retarded, and whether they are actually is another question, but are defined as greater where there are lower incomes. Of course, we know from the whole title I experience there is not an even distribution throughout the country. Are the two that you use as examples—are those an exception from the rule?

Has any real good study been made? You know, asking a principal does not seem to me to be a good study.

Mr. MARTIN. No.

Mr. QUÉ. Well, is the percentage of deaf students the same in every school district in the country?

Mr. MARTIN. Let's see if I can make a more carefully summarized answer.

The kinds of disorders which are, or which can be, defined more objectively, and even then there is a professional argument, but for all sensible practical purposes, deafness and blindness can be identified as can observable or hopedie handicaps, neurological injuries, all those, however, represent a very small percentage of the children who are made up of handicaps and each one of those is less than 1 percent, and in some cases less than three-quarters of 1 percent, for example, 60,000 blind children, somewhat more deaf children. The largest bulk of handicapped children who have learning problems in the schools fall into the classification of the speech and language problems, mental retardation, behavior problems, most of whom are not given appropriate services, specific learning disabilities which are the discrete kind of inability to read and spell and to handle arithmetical calculations that seem to be independent of intelligence, and that is where three-quarters of the population lies and in each of those areas the continuum of children from handicapped to normal is, in fact, a continuum and there is not a clearcut definition.

So I would say that—well, I have a good deal of confidence in those figures, much more than I did 4 or 5 years ago, because I agree with you that while the survey of principals are not a good guide, what was so interesting to me was they came up with the same kind of observational data despite the fact they are not plugged into the special education loop, and the fact they didn't come up with 25 percent or 30 percent was really telling to me since it was an independent kind of study by NSEC and did not use our normal data channels.

In sum, then, I think the population of handicapped children seemed to be remarkably stable across the States at least. It tends to increase



in relation to other social factors that have a retarding effect on educational achievement including nutrition and a number of other things which may be mixed into it, but I think it can be treated sensibly as being relatively constant. My own feeling in relationship to Federal programming is that it is desirable in helping the handicapped children to be able to address the larger problems and not to get involved in having to make too many fine discriminations.

It is better to speak to the broad purposes of the program and allow the local school people to make their fine discriminations on children. It is impossible to manage a program like that from Washington.

Mr. QUIE. I don't have any problem with the 10 percent nationally. But when you get down to an individual school district that can vary from 500,000 children to 100 children, each one of them would get 10 percent of the money if the Federal Government provides assistance to education.

Mr. MARTIN. That is what I am saying. It would be difficult for them to use and it would require for accountability a good deal of observations on the part of whoever was responsible for those funds in such areas as identification and of diagnosis of children and in such areas as effectiveness of programming and it would require whole new concepts of operation if you are going into individual child accountability on a national level.

On the other hand, it seems to me there is a great deal of freedom for legislation to follow approaches which, while relatively arbitrary, nevertheless, will speak to those concerns. For example, we can impose a limit on the numbers of children who can be counted, especially if you are not attempting to do 100 percent of the job yourself. You can say, well, for Federal purposes we will define the group as including a certain percentage of the children.

Mr. BRADEMAs. Will you yield?

Mr. QUIE. Yes.

Mr. BRADEMAs. I am not sure if the gentleman from Minnesota was here earlier in the week when some of the witnesses suggested—with respect to the difficulty of trying to determine the appropriate amount of Federal money that ought to be provided for education of handicapped children—suggested that we should, in effect, link the grant to the cost of providing for salaries of instructors.

I was reminded of the problem that Mr. Quie and I had in 1972 in trying to determine the right formula for general institutional aid and because we couldn't really determine need of the institution, we linked the institutional aid to Federal student aid on the campus.

I wonder if the gentleman from Minnesota would allow me, by analogy, to put to the witnesses the question of their reaction to that particular proposal because it might be one way of getting us off of this very difficult hook of finding out what "need" is.

Dr. Martin, you are familiar with the question I am putting.

Mr. MARTIN. Let me see if I understand. Essentially you say: Could you use teachers' salaries as a kind of index and relate to it rather than to other more complicated things?

Mr. BRADEMAs. That is correct and you can move in one of two ways: One, the money arrived, it could be used for teachers' salaries, or any purposes associated with educating the handicapped, the way the Higher Education Act institutional aid funds worked.



Mr. MARTIN. I think many States have followed that pattern. For example, they will say, "We will give  $x$  amount, say \$6,000 or \$8,000, for a teacher unit, which would include some range of children up to 10 or up to 12—depending on the disability and then allow local variations to occur, supplementing those and so forth." About 80 percent by our estimate and some say 85 of the cost education relates to the teachers' salaries and it seems to me you could relate to it this factor in legislation. If you want to reflect other costs, relate to salaries on a percentage basis, for example, plus 10 percent for overhead. I think it would be better to be simpler in Federal legislation—that would be my feeling.

Mr. QUIE. How do you feel about the fringe benefit as well as the direct salary?

Mr. MARTIN. That is what I am saying, Mr. Quie. I tried to listen to people testifying before the committee and think about it and the way the States have handled it, it is very, very variable. As you know, no two States do exactly the same thing. But I would think that you could, again, using sort of a logical commonsense approach, apply a certain percentage, if you decided to do that at all, of extra kinds of things, to a percent of the total.

You would say, for example, using dollar figures, if 80 percent of the cost of education are the teachers, then the other 20 percent or one-quarter of the basic sum is for everything else. That is the ratio right there.

Mr. QUIE. That is a way of determining teachers' salaries by taking in all fringe benefits. New York paid higher retirement benefits and, therefore, confused the title I formula. I want to finish on the regional question I started.

I think assisting on a regional basis is one area the Federal Government can help if no one else can. I am bothered by the fact that the Federal Government tends to administer through regional offices, but St. Paul may be serving the deaf children and the ones who want to be trained to be translators, from areas outside the five-State area of region No. 5.

Now, can that be handled out here in Washington rather than the regional office? Since the State is not a good unit in the case you are going to help to provide help to people from other States, I doubt the Federal region then would be a good unit either.

Mr. MARTIN. I think the granting for purposes of children can be separate from the administrative location, is what I would say. If it makes sense for Minneapolis to serve people within a certain wide State region, a grant can go to St. Paul-Minneapolis Technical Institute for those purposes, quite independent of the fact of what Federal administrative region has to be involved.

A program could be monitored from Washington as it is now, or it seems to me it could be monitored from somewhere else—but I would think we want to avoid getting into a situation where we felt that service delivery patterns somehow had to conform to some Federal administrative region. I think we certainly wouldn't want to do that.

Mr. QUIE. The last thing I will say, Mr. Chairman, I am glad you pointed to the Rand study and used that 12 percent. I didn't realize it was 12 percent. I was using Fred Weintraub's figure of 1.5 percent for

a long time. I wish I could give some of those speeches over again where I said the Federal share was 1.5 percent.

I commend my colleagues and the U.S. Office of Education for putting as much as 12 percent into the handicapped program.

Mr. BRADEMAS. The gentleman from Florida.

Mr. LEHMAN. I just wanted to say I listened carefully to your testimony. I have observed in visiting schools for the handicapped that there should be some kind of funding for programs to make the "normal" kids in these same schools learn something also about how to deal with handicapped children. If you do something like this, we can certainly do a better job of educating, and also prevent the kind of discrimination, either consciously or unconsciously, that the handicapped children encounter in the regular school system.

I think it is important we really develop some kind of program in this area.

I have some other ideas in mind with regard to the period after you educate them, a kind of transitional program between the school and their livelihood. We are going to have to have an underpinning to make this transition work out without the kind of trauma that we so often encounter in these situations.

Have you any comments on this?

Mr. MARTIN. That is an interesting and perceptive comment, Mr. Lehman, because most of us in the field are extraordinarily interested in trying to see handicapped children educated wherever possible with nonhandicapped children in what we call mainstream of integrated settings, but the problems, even though this is a tremendously philosophical desirable position, are very real and you speak to them in that way.

Society at large is not used to handicapped people, has not frequently had close dealings with them because we tended to institutionalize them and limit their access to public transportation and public buildings, and teachers, in general, have not had experience with handicapped children in their training, nor have principals or supervisors, so they are not terribly well able to set a model for the children of the kinds of attitudes, the kinds of understandings, the kinds of personal comfort, all of which are very necessary if handicapped children are not going to be set aside or isolated and perhaps rejected in a normal school.

We have underway, and I spoke as recently as yesterday morning to a dean of a college of education, a program to encourage the reorienting of the basic teacher programs to include a chance to work with handicapped children, a chance to see that they are human beings and a chance to develop some sense of confidence on the part of teachers. We intend to spend a good deal of what resources are available to us to try to impact on that basic teacher education program, which I personally see as pretty critical to get at the children's attitudes and at the same time I think we would be very pleased to talk with you further about ideas about working directly with the children and thinking along there about the whole problem of social attitudes.

Mr. LEHMAN. You mentioned two other things I encountered with my experience in Dade County and one is the difficulties that the parents have in accepting the fact their children are put in these exceptional classes. I think you have to educate the parents in this sense,

because if you don't counsel with them you are not succeeding before you start.

Secondly, we have had successful programs in Dade County in integrating at the school level behavior problem children in working with handicapped. They forget their own frustrations, we found. If you can develop pilot programs along this line throughout the country and properly fund them, I think you can really solve two problems at the same time in some cases.

Mr. MARTIN. I think you are on target with all three of those observations and they are all ones that really can use a great deal more money.

Thank you.

Mr. BRADEMAS. Thank you, gentlemen, very much and I hope you will be willing to come back and meet with us again as we move along with this legislation. We appreciate your responses to our questions which we hope, especially speaking for the Chair, have not been unduly harsh. Thank you very much.

We are next pleased to hear from our distinguished colleague who has long had an interest in this legislation and who continues to confound the Chair by the breadth and range of his interest. Mr. Pepper, we are very glad to have you with us.

#### **STATEMENT OF HON. CLAUDE PEPPER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA**

Mr. PEPPER. Thank you very much, Mr. Chairman and members of this distinguished committee.

There are three reasons I am particularly pleased to be here this morning and to testify in support of your bill, H.R. 70. First, I am always delighted to come before this very knowledgeable and far-sighted committee and to support the many meaningful measures you are bringing to the House which mean so much to the people of this country.

Second, last Friday in Miami my friend, Mr. Brennan, who is here with me today, and I went out to the Cerebral Palsy Center which I am sure your distinguished member, Mr. Lehman, is very much aware of and where there were some 50 or more children. I presented them with a flag which was flown over the Capitol and which we raised that day to the staff of the flagpole. Afterward I had a little discussion with the director of that center and some of his associates and they told me, to my astonishment, that this institution which gives daily education and training to handicapped children was not getting any Federal funds.

I could hardly believe that so deserving an institution was not included in some of our Federal programs. But the director told me that about 60 percent of their children who are brought in every day by their parents or guardians are not mentally retarded. Therefore, they do not get the benefit of any mental retardation program. They are physically handicapped; they had brain damage or some other injury, so this program wouldn't cover that very deserving segment of our people.

The third point is, this bill is very similar to the first bill I introduced in the Senate in February 1937. I thought it would be of some

value to the committee to see what was thought and what the governmental reaction was: what the bureaucratic response was in that day 37 years ago, as some background for what you are attempting to do today. That bill, S. 1634, introduced, as I said, in the first session of the 75th Congress, was to provide for the education of all types of physically handicapped children, to make an appropriation of money therefor; and to regulate its expenditure. It, like H.R. 70, was based on facts which indicated there should be a Federal policy which recognizes the inability or unwillingness of the States to establish the special and more costly programs which are required to meet the special needs of handicapped children.

S. 1634 required State plans which, among others, included provisions for information on the number of physically handicapped children within the State, provided for the administration of the State plan by the State department of education or public instruction, provided that the administering State agency make such reports as the Commissioner of Education of the United States required, provided for carrying on the education of physically handicapped children as a part of the State program of public instruction, provided for the equitable distribution of funds between rural and urban areas and among the various types of physically handicapped children to be served, and provided for cooperation with other agencies within the State charged with the responsibility for services for physically handicapped children.

The bill authorized the sum of \$11,580,000 for the purpose of enabling each State to establish, extend and improve services for educating handicapped children. It allotted to each State the sum of \$40,000 which was not required to be matched, to be used to establish, extend, and improve services for educating physically handicapped children, especially in rural areas; and it provided for the sum of \$9 million to the States on the basis of the ratio of the number of their handicapped inhabitants aged 5 to 20 years to the total number of inhabitants aged 5 to 20 years for the excess cost of the education of physically handicapped children. In addition, the sum of \$500,000 was appropriated to the U.S. Office of Education to be available for the purpose of making studies, investigations, and reports pursuant to the act.

Hearings were conducted on this bill by the Senate Education and Labor Committee and I shall summarize some of the facts and issues which were presented in the testimony then and which are now pertinent to the consideration of H.R. 70.

It was pointed out that in 1937, we had an excellent Federal census that enabled us to tell accurately the number of farms and the various types of livestock found in the various States in the Union. We had reliable information in regard to the number of horses, hogs, and cattle that we had in 1930 as compared to the number we had in 1935, but we had no such reliable information with regard to the increase or decrease in the numbers of different types of physically handicapped children. In fact, we did not even have accurate information as to the number of such children in the United States. We had only estimates based on scattered surveys which indicated that no less than 1.8 million children in the United States were so physically handicapped that they required differential or special education.

In those days the term "physically handicapped" was interpreted to include all children who were crippled, blind, partially seeing, deaf, hard of hearing, defective in speech, cardiopathic, tubercular or other physically handicapped, and who for their education required an expenditure of money in excess of the cost of educating physically normal children. The 1.8 million estimate did not, therefore, include the handicaps caused by mental retardation and emotional disturbances which it is now recognized also deprive millions of children of achieving their full potential and functioning totally or partially in our society.

Data was furnished the Senate committee by the Office of Education indicating that during the years 1935 and 1936 only 166,000 of the 1.8 million, or less than 10 percent, were being provided for. We were reminded that if we went back more than a century in the history of special education, we could find that the deaf and blind were provided for in residential and private schools in the country; but special education for the crippled child, for the hard-of-hearing child, for the partially seeing child, and for the child defective in speech and the child of lowered vitality was inaugurated about 1902.

This history indicated that it had taken us three generations of elementary and high school students to provide for 10 percent of the physically handicapped children of this Nation. At that rate it would take us more than 30 generations of high school and elementary school children to provide the type of education the physically handicapped children of this Nation require.

The committee found also a marked lack of State organizations interested in promoting education of these different types of children, except some States in the East. The need for Federal aid in the Western States was great. Then there were the Southern States which were providing for but a very small percentage of their children in this respect.

When we considered the income of those Southern States, we found they ranked in the lowest 25 percent of all the States from the standpoint of income per child enrolled in elementary and secondary schools; and when we compared them with the 10 States that ranked highest in incomes, we found that they were providing seven times as large a percentage as the Southern States.

At that time no State was providing special education for more than approximately 25 percent of its physically handicapped children. Federal aid for agricultural extension, agricultural and trade education, and vocational rehabilitation had resulted in a remarkable development of these different types of education work. The need for a similar development in the field of special education was equally great then as it is now.

Several reasons were given to explain the lack of educational opportunity for handicapped children. First, the large majority of people's children were not physically handicapped; therefore, most people are not immediately interested. Second, special provisions must be made for the education of the handicapped which are more expensive per child than the provisions for the so-called normal child. Whenever you put those two conditions together, it is bound to follow that the development in a field involving those conditions will be rather slow unless in some way there is an expression of real vision in the social structure, and may I add in the leadership of congressional

committees such as yours, that will put a stimulus behind the movement to correct that great social weakness.

Mr. Chairman, this lack of "real vision" has since resulted in lack of concern about the increasing numbers of school dropouts each year, lack of concern about the increasing incidence of crime committed by the educationally disadvantaged, and lack of concern about the large number of Americans who have been rejected for military services because of physical or education deficiencies.

Mr. Chairman, from 1943 to 1946 I was chairman of the special committee of the Senate that investigated the number of young men unable to serve our country in time of war and there was a serious threat there to the security of the country. We found something like 4 million were rejected for educational or physical deficiencies and that was the reason the committee was set up to make a study of why they were rejected and what could be done to prevent the country's losing the support in time of crisis of so many of its citizens which came within the eligibility to enter into the Armed Forces of our country.

Only last week in Miami I appeared before a meeting of the city commissioners and the chief of police of that city testified, as he does monthly, about crime conditions in the city of Miami. He told about an increase in serious crimes. Later, when I saw the chief outside, I said: "Chief, what was the age group generally that participated in serious crimes or felonies like murder, rape, and assault and robbery," and he said: "50 percent of those who perpetrate these serious crimes are under 18 years of age."

Then I said: "Chief, how many of those 50 percent are dropouts?" and he said, "9 out of 10."

Now, if we really want to curb crime in this country, I know of no more effective way to do it than to try to prevent school dropouts, because the school dropout is almost always an inevitable candidate for criminality in a very short time. He has no education adequate to support him or skill adequate to give him the income he would like to have or life he would like to live. The first thing you know, he engages in a stickup of a service station or some other criminal activity and is then in serious trouble in a juvenile court and usually goes through several experiences in the juvenile court. A juvenile judge testified before recent hearings of the House Select Committee on Crime, that 50 percent of those involved in serious offenses in the juvenile court wind up in penal institutions of this country, having committed again serious crimes.

Chairman Perkins tells me, and I hope we give consideration to this next week when we consider the elementary and secondary education bill, that there are funds in that bill to prevent school dropouts. But my information is that last year we reduced the appropriation from \$2.5 million, which we then provided to prevent school dropouts, to \$4 million. So, obviously most of the school dropouts fall within some of the categories you have described in your very able bill as being physically handicapped or handicapped in some way or another, that is emotionally or physically or some other way. Therefore, what you are doing here is to try to give an opportunity for a normal life to these handicapped people, and also to protect the victims of future crimes that will probably be committed by these school dropouts if they do not get the kind of help they need.

I hope, Mr. Chairman and members of the committee, that you will ask for and get adequate money to do the job, because the schools of this country can adapt their curriculum and instruction to this type of individual who is so handicapped if they have the means to do so.

The real issue considered in those hearings on S. 1634 was discussed by John W. Studebaker, then U.S. Commissioner of Education.

He stated:

Two years ago when the Social Security bill was before Congress I appeared before a committee of each House to present a brief report in behalf of a phase of Social Security which was not provided for in the Social Security Act -- that phase having to do with the education of physically handicapped children.

The Office of Education, and organized education in general, have been interested in this problem, as you know, for many, many years. We are still interested in it. It is a problem that certainly is not unsolvable.

... but, as you know, Senator Pepper, the procedures require that all bills be checked by the Bureau of the Budget to ascertain whether or not they would lead to Federal expenditures beyond reason. I do not have an official report from the Bureau of the Budget, but an informal budget indicated that the Bureau of the Budget will find it necessary to report "unfavorable" on this bill, as being not in accord with the fiscal policies of the Government.

In other words, we didn't have the money to try to save from a life of deprivation or misery or crime the handicapped children of this country.

The Commissioner of Education, however, after considerable review of the need for Federal aid concluded:

It seems to me,

he said,

that in the interest of genuine social security for those handicapped individuals called the physically handicapped, the Federal Government, sooner or later, when its fiscal policies will permit, by the sheer logic of its previous action, should do something for the education of these physically handicapped millions.

Mr. Chairman and members of the committee, that was 37 years ago that a Commissioner of Education of this country made that statement. Mr. Chairman, on March 7, 1938, just 36 years ago this month, my bill was reported favorably from the Senate Committee on Education and Labor. However, the Senate failed to act on it. Mr. Chairman, if your staff does not find it too voluminous, I would hope that you might find space in your hearing to incorporate the report of the Education Committee of the Senate in 1938 recommending exactly the type of education you are proposing here today.

Since that time the courts have held that, under our Constitution, all handicapped children have a right to an education designed to meet their special needs in order to realize their full potential. By the way, I would thank you if your staff would determine whether or not it would be too burdensome for the record to include my bill, S. 1634, to which I have alluded.

In the last decade, the Federal Government has provided some "seed money" to the States to assist the States to carry out the court decisions, and the mandates under some Federal statutes to provide for the education of some handicapped children. But until such time as H.R. 70 is enacted, we will be deliberately neglecting these children by our failure to create the essential Federal partnership with the States to provide a right to an education for all our Nation's handicapped children.



Mr. Chairman, all the data you have published—in your statement on this bill concerning the costs to all American taxpayers for the welfare and institutionalization of handicapped individuals who are deprived of special education—clearly indicates that the only sound fiscal policy, aside from the urgent moral, economic and social policy, is to give the States the Federal financial and program assistance which is provided for in H.R. 70.

Let me add only this, Mr. Chairman. I saw, a week ago when I was out at the Center for the Cerebral Palsy victims, those children sitting in their chairs, some in wheelchairs, and those dedicated teachers so tenderly trying to help the children. Then it occurred to me that it might be of meaning to those children to take that flag of our country, already folded up and to be taken out to the flag staff, around to each one of those wonderful little children. I said: "Would you like to touch our country's flag?" and, sir, it was an inspiration to see how it pleased those children and the difficulty that some of them had to get their hands over to touch the flag of our country, but it meant something to them. But, yet to be told a little bit later by the director that no Federal program of the United States was providing any help shocked me, and I am glad to find, a week later that your distinguished committee is moving ahead with enactment of legislation that will help them.

Thank you very much.

Mr. BRADEMAS. Thank you very much, Mr. Pepper, for a characteristically eloquent and well-informed statement. This subcommittee is not at all surprised to see that, once again, in an area of great human need, the gentleman from Florida, Mr. Pepper, has been a pioneer, and without objection both the text of S. 1634 and the report numbered 1458 from the first session of the 75th Congress in February of 1937 and March of 1938 will be included in the record.

[The documents referred to follow:]

[S. 1634, 75th Cong., 3d sess.]

A BILL To provide for the education of all types of physically handicapped children, to make an appropriation of money therefor, and to regulate its expenditure

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### APPROPRIATION

SECTION 1. For the purpose of enabling each State to establish, extend, and improve services for educating physically handicapped children, the sum of \$11,580,000 is hereby authorized to be appropriated for each fiscal year, beginning with the fiscal year ending June 30, 1939. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Commissioner of Education of the United States, State plans for such services: *Provided*, That no funds so allotted under this section shall be used directly or indirectly to purchase, preserve, erect, or repair any building or buildings or for the purchase, rental, or maintenance of any lands or buildings.

#### ALLOTMENTS

SEC. 2 The Commissioner of Education of the United States shall, out of the sum of \$11,580,000 appropriated pursuant to section 1 hereof, for each fiscal year allot—

(a) To each State the sum of \$40,000, which shall not be required to be matched, which sum shall be used to establish, extend, and improve services for educating physically handicapped children, as hereinafter provided, especially in rural areas.

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(b) The sum of \$9,000,000 to the States on the basis of the ratio of the number of their inhabitants aged five to twenty years, inclusive, to the total number of inhabitants aged five to twenty years, inclusive, of all the States as determined by the most recent United States census. Such pro rata amount allotted to each State annually shall be used for carrying out the provisions set forth in section 1 in paying the cost of services for the education of physically handicapped children over and above the cost of educating physically normal children in the public schools of the State and subdivisions thereof, and for the training of teachers of such children. *Provided*, That the annual report filed by the State on or before September 1 of each year shall show at least an equal amount to have been expended during the preceding school year by the State or subdivisions thereof or both, specifically designated for the excess cost of the education of physically handicapped children as defined in this Act. In case such expenditures are not sufficient to equal, dollar for dollar, the amount allotted by the Commissioner of Education of the United States, such allotment shall be reduced to an amount equal to the total of such expenditures.

(c) The sum of \$500,000 to the United States Office of Education to be available from and after the passage of this Act for the purpose of making studies, investigations, and reports pursuant to the provisions of this Act, paying the salaries of the officers and assistants and such office and other expenses as are deemed necessary by the Commissioner of Education of the United States to the execution and administration of this Act, including expenses of attendance at meetings of educational associations and other organizations, expenses of conferences called to meet in the District of Columbia or elsewhere, rent and equipment of offices in the District of Columbia and elsewhere, purchase of books of reference, lawbooks and periodicals, stationery, typewriters and exchange thereof, miscellaneous supplies, postage on foreign mail, printing and binding to be done at the Government Printing Office, and all other necessary expenses.

#### STATE PLANS

SEC. 3 (a) State plans for services for educating physically handicapped children shall (1) provide information on the number of physically handicapped children within the State; (2) provide for financial participation by the State as set forth in section 2, subsection (b); (3) provide for the administration of the State plan by the State department of education or public instruction; (4) provide for such methods of administration as are necessary for the efficient operation of the plan; (5) provide that the administering State agency will make such reports as the Commissioner of Education of the United States may from time to time require; (6) provide for carrying on the education of physically handicapped children as part of the State program of public instruction; (7) provide for the equitable distribution of funds between rural and urban areas and among the various types of physically handicapped children to be served; (8) provide for cooperation with other agencies within the State charged with the responsibility for services for physically handicapped children.

(b) Such State plans shall be submitted to the Commissioner of Education of the United States and if found to be in conformity with the provisions of this Act shall be approved.

#### PAYMENTS TO STATES

SEC. 4 (a) On or before the 1st day of January of each year the Commissioner of Education of the United States shall certify to the Secretary of the Treasury the amount to which each State is entitled under the provisions of this Act. Upon such certification the Secretary of the Treasury shall pay semiannually in equal amounts on the 1st day of July and January of each year to the treasurer of each State, as custodian of Federal funds, the moneys to which the State is entitled under the provisions of this Act. The money so received by the treasurer of the State shall be paid out on the requisition of the State superintendent of public instruction or director, or commissioner of education, for expenditures already incurred for services for the education of physically handicapped children, as specified in this Act.

(b) Whenever any portion of the fund annually allotted to any State has not been expended for the purposes provided for in this Act, a sum equal to such portion shall be deducted by the Commissioner of Education of the United States from the next succeeding annual allotment from such fund to such State.

SEC. 5. (a) If the Commissioner of Education of the United States shall find, after reasonable notice and opportunity for hearing, any failure on the part of the State agency administering the State plan for the education of physically handicapped children, as approved by the Commissioner of Education of the United States, to comply substantially with the provisions of this Act, the Commissioner of Education of the United States shall notify such State agency that further payments will not be made until said Commissioner is satisfied that there is no longer any such failure to comply. Until he is so satisfied, he shall make no further certification to the Secretary of the Treasury with respect to such State.

(b) If any allotment is withheld from any State, the State superintendent of public instruction, director, or commissioner of education of such State may appeal to the Congress of the United States, and if the Congress shall not direct such sum to be paid it shall be covered into the Treasury.

#### OPERATION OF STATE PLANS

SEC. 6. (a) The Commissioner of Education of the United States, with cooperation of representatives of State departments of education or public instruction, shall have power to formulate policies and minimum standards governing the administration of this Act with regard to the expenditure within the State of the funds provided in this Act, qualifications of teachers, supervisors, and directors, and other matters relative to carrying out the purposes and provisions of this Act; and also to make such studies and investigations as may be necessary or appropriate to carry into effect the purposes and provisions of this Act.

(b) It shall be the duty of the Commissioner of Education of the United States to examine and check annually plans covering a period of one to five years to be submitted by the State department of education or public instruction and approve the same if found to be in conformity with the provisions hereof.

SEC. 7. In no State receiving Federal funds for the purposes of this Act shall the amount expended by the State or its subdivisions for the excess cost of special education of physically handicapped children in any year be less than the average annual expenditure in that State for the same purpose in the biennium of 1934-1936.

SEC. 8. (a) The State superintendent of public instruction or director or commissioner of education shall make an annual report to the Commissioner of Education of the United States, on or before September 1 of each year, on the work done in the State and the receipts and expenditures of money under the provisions of this Act.

(b) The Commissioner of Education of the United States shall make an annual report to Congress, on or before December 1, on the administration of this Act and shall include in such report the reports made by the State superintendents of public instruction, directors, and commissioners of education on the administration of this Act by each State and the expenditure of the money allotted to each State.

#### DEFINITIONS

SEC. 9. As used in this Act, the term "States" shall mean the several States, the Territories of Alaska and Hawaii, the Island of Puerto Rico, and the District of Columbia.

SEC. 10. The term "physically handicapped" shall be interpreted for the purposes of this Act as including all children who are crippled, blind, partially seeing, deaf, hard of hearing, defective in speech, cardiopathic, tuberculous, or otherwise physically handicapped, and who for their education require an expenditure of money in excess of the cost of educating physically normal children.

## Calendar No. 1521

75TH CONGRESS }  
3d Session }

SENATE

{ REPORT  
No. 1458EDUCATION FOR PHYSICALLY HANDICAPPED  
CHILDREN

JANUARY 5 (calendar day, MARCH 7), 1938.—Ordered to be printed

Mr. PEPPER, from the Committee on Education and Labor, submitted  
the following

## REPORT

[To accompany S. 1634]

The Senate Committee on Education and Labor, to whom was referred the bill (S. 1634) to provide for the education of all types of physically handicapped children, to make an appropriation of money therefor, and to regulate its expenditure, having considered the same, report it back to the Senate without amendment and recommend that it do pass.

Section 1 of this bill authorizes to be appropriated each fiscal year, beginning with the fiscal year ending June 30, 1939, the sum of \$11,580,000, for the purpose of enabling each State to establish, extend, and improve services for educating physically handicapped children. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Commissioner of Education of the United States, State plans for such services; provided that no funds so allotted under this section shall be used directly or indirectly to purchase, preserve, erect, or repair any building or buildings or for the purchase, rental, or maintenance of any lands or buildings.

Section 2 (a) allots to each State the sum of \$40,000, which shall not be required to be matched, to be used to establish, extend, and improve services for educating physically handicapped children, especially in rural areas. This sum is allotted each fiscal year by the Commissioner of Education.

Section 2 (b) provides that the Commissioner of Education shall each fiscal year allot the sum of \$9,000,000 to the States on the basis of the ratio of the number of their inhabitants aged 5 to 20 years, inclusive, to the total number of inhabitants aged 5 to 20 years, inclusive, of all the States as determined by the most recent United States census. Such pro rata amount shall be used for carrying out the provisions set forth in section 1. The annual report filed by the

## 2 EDUCATION FOR PHYSICALLY HANDICAPPED CHILDREN

State on or before September 1 of each year must show at least an equal amount to have been expended during the preceding school year by the State or subdivisions thereof, or both, specifically designated for the excess cost of the education of physically handicapped children as defined in this act.

Section 2 (c) appropriates the sum of \$500,000 to the United States Office of Education to be available for the purpose of making studies, investigations, and reports pursuant to the provisions of this act, paying the salaries of the officers and assistants and such office and other expenses as are deemed necessary by the Commissioner of Education of the United States to the execution and administration of this act.

Section 3 outlines the kind and amount of information that must be incorporated in the State plans before they are submitted to the Commissioner of Education.

Sections 4 and 5 relate to the mechanics of making the payments to the States.

Sections 6, 7, and 8 relate to cooperation between the Commissioner of Education of the United States and the representatives of State departments of education or public instruction, and the dates upon which State plans and reports must be made.

Section 9 provides that the term "States" shall mean the several States, the Territories of Alaska and Hawaii, the island of Puerto Rico, and the District of Columbia.

Section 10 provides that the term "physically handicapped" shall be interpreted for the purposes of this act as including all children who are crippled, blind, partially seeing, deaf, hard of hearing, defective in speech, cardiopathic, tuberculous, or otherwise physically handicapped, and who for their education require an expenditure of money in excess of the cost of educating physically normal children.

Three statements made in the hearings held on this bill admirably express the purposes and the provisions of the bill. They are as follows:

### STATEMENT OF E. JAY HOWENSTINE, CHAIRMAN AND EXECUTIVE SECRETARY OF INTERNATIONAL SOCIETY FOR CRIPPLED CHILDREN

Mr. HOWENSTINE. Mr. Chairman, on January 13, at a meeting held in Washington to consider the bill which is now before your committee for hearing, the following representatives elected your speaker as chairman of a special legislative committee:

Charles Scott Berry, director, bureau of special and adult education, Ohio State University, Columbus, Ohio;

Lewis H. Carris, managing director, National Society for the Prevention of Blindness, New York City;

Mary E. Church, secretary, American Association of Crippled Children Executives, Baltimore, Md.;

Elbert A. Gruver, president, American Association to Promote the Teaching of Speech to the Deaf, Germantown, Pa.;

Robert B. Irwin, executive director, American Foundation for the Blind, New York City;

Floyd I. McMurray, chairman, special committee, National Council of Chief State School Officers, Indianapolis, Ind.;

Harris Taylor, president, Convention of American Instructors of the Deaf, 15 Gramercy Park, New York City; and

Petty C. Wright, executive director, American Society for the Hard of Hearing, Washington, D. C.

As chairman with authority to name the sponsoring committee, we named in addition to those listed above the following nationally known authorities, all of whom have consented to serve:

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Harry J. Baker, president, International Council for Exceptional Children, Detroit, Mich.;

Frank L. Beals, assistant superintendent of schools, Chicago, Ill.;

Ignatius Bjorlee, superintendent, Maryland State School for the Deaf, Frederick, Md.;

Merle E. Frampton, professor of education and general adviser, Teachers College, Columbia University, New York City;

John J. Lee, associate professor and general adviser, department of teacher training in special education, Wayne University, Detroit;

Samuel D. Robbins, secretary, American Speech Correction Association, Boston, Mass.;

Louis J. Taber, master, The National Grange, Columbus, Ohio;

W. S. Taylor, dean of the college of education, University of Kentucky, Lexington, Ky.;

M. M. Walter, president, National Rehabilitation Association, Harrisburg, Pa.; and

L. L. Watts, president, American Association of Workers for the Blind, Richmond, Va.

May I say that your speaker was named to this chairmanship because of his official connection with the International Society for Crippled Children.

The International Society for Crippled Children was organized in 1920 by "Daddy" Allen, of Elyria, Ohio, who, together with a small group of lay folks from a half dozen States were then taking the first step in building a society for the care, cure, and education of crippled children. That first step was the enactment of State legislation which would place the responsibility of rehabilitating the crippled child on the State. Since that time State and Federal legislation has been one of our major activities.

With 40 affiliated State societies rapid strides have been made in the States providing legislation for hospitalization. The Social Security Act which a short time past claimed number one position on our program has impelled and inspired all States to extend their legislation and appropriations to better serve the physical needs of the crippled child. Prior to this period we have worked in close cooperation with the rehabilitation association for State and Federal legislation and appropriation.

All of the allied groups so represented have promoted a similar program of State legislation in behalf of the particular physical handicap type which they are organized to serve, the blind and deaf organizations being pioneers in this field of endeavor.

This brief introduction is so presented in order that your honorable body may know the force that has so united in viewing the problem in its broadest sense and the unselfish attitude of each group in their desire to effect Federal legislation which may serve all types of physically handicapped children alike that they may become happy, contented, and productive, even self-supporting citizens of our Nation.

The evidence which will be presented will show approximately the number of physically handicapped children being afforded special educational advantages, the total cost incident thereto, the estimated average cost for each type and the estimated number of children in the United States needing such special facilities. It will also show clearly the great gap in this program for physically handicapped children because of inadequate legislation and appropriations in a great majority of States. The evidence will further show how the Federal Government can as it has in other fields impel and inspire the States to establish and develop special educational facilities for all types of physically handicapped children.

It is my privilege to present a list of witnesses who will speak for their respective groups. The one exception being the first witness, Dr. Charles Scott Berry, director of the bureau of special and adult education of Ohio State University, who in reviewing the bill will outline the general plan under which this proposed legislation will affect all types of physically handicapped children, together with data showing the need for the appropriation called for.

Dr. Berry is a recognized authority on the subject of special education for physically handicapped children. He established and for years directed the department of special education in the public-school system of Detroit.

In his official capacity as vice president of the International Society for Crippled Children and chairman of the education committee he has with the aid of representatives of allied organizations drafted the bill which is now before you for consideration.

May we express to the Senators comprising the Committee on Education and Labor of the United States Senate our deep appreciation for the thoughtful and favorable consideration which we feel this bill will receive in your hands.

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## STATEMENT OF CHARLES SCOTT BERRY, DIRECTOR, BUREAU OF SPECIAL AND ADULT EDUCATION, OHIO STATE UNIVERSITY

Mr. BERRY. Mr. Chairman, I represent the committee which formulated this bill. I wish to speak briefly in behalf of more than 1,500,000 physically handicapped children of this Nation who are in need, but who are not able to speak for themselves, and in the few minutes at my disposal I shall attempt, first to briefly point out the most significant features of the bill; second, to indicate the need for Federal aid; third, to show why the Federal Government should render this aid; and fourth, to indicate the benefits or advantages which will accrue if this bill becomes law.

This bill provides for a Federal appropriation of \$11,580,000 to establish, extend, and improve the service for the education of physically handicapped children in the United States in the various States of the Union. Forty thousand dollars is to be allotted to each State to be used to establish, extend, and improve services for the education of physically handicapped children especially in rural communities. This \$10,000 does not have to be matched by the State. Nine million dollars will be allotted to the various States on the basis of the ratio of the number of children in each State from 5 to 20 years of age in relation to the total number of such children in the United States as a whole, this money to be used to defray the excess cost of the education of crippled children over that required for the education of the child who is not physically handicapped, under these conditions:

First, that each State must submit a State plan, and the more significant features involved in that State plan are as follows:

First, the State must provide information in regard to the number of physically handicapped children in the State.

Second, it must provide for an equitable distribution of funds between rural and urban areas and among the various types of handicapped children.

Third, it must provide for efficient administration by the State Department of Education of this plan, and adequate supervision.

In the fourth place it must provide for cooperation with other agencies which have assumed the responsibility for service to the physically handicapped children.

Now, in the second place, in regard to the need, we have a census, an excellent Federal census, that enables us to tell accurately the number of farms and the various types of livestock found in the various States in this Union. We have reliable information in regard to the number of horses, hogs, and cattle that we had in 1930 as compared to the number we had in 1935, but we have no such reliable information in regard to the increase or decrease in the numbers of different types of physically handicapped children, and, gentlemen, we do not even have accurate information as to the number of such children in the United States. We have based our estimates on scattered surveys that have been made throughout various sections of the country and also the results secured in certain cities where they have taken a considerable proportion of the children in the early grades and high schools and have put them in special classes. We estimate that not less than 1,800,000 children in the United States are so physically handicapped that they require differential or special education.

They require the type of training which involves special equipment and special techniques, which increase the cost of their education beyond that of the child who is not injured in like manner. The purpose is to give these children an equal opportunity for the development of their possibilities with that which is enjoyed by the child who does not suffer from physical handicap. We have not less than 1,800,000 who stand in need of such education in the United States. We are at the present time taking the data supplied by the Office of Education for 1936 and 1936, providing for only 166,000 of that number, less than 10 percent of the 1,800,000. And remember, gentlemen, that we can go back more than a century in the history of special education for the deaf and blind in residential and private schools in this country, but special education for the crippled child, for the hard-of-hearing child, for the partially seeing child, and for the child defective in speech and the child of lowered vitality, was only inaugurated about 26 years ago; that is, it has taken us three generations of elementary and high-school students to provide for 10 percent of the physically handicapped children of this Nation. At that rate, gentlemen, it will take us more than 30 generations of high-school and elementary-school children to provide the type of education the physically handicapped children of this Nation require, and our obligation is to this generation and the next two or three generations that will pass through our schools in the course of our lifetime.

Now, how is this great need to be met by providing but for 10 percent of those who need differential treatment? When we turn to the various States we find a



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most marked discrepancy with reference to the percentage of such children provided for; in Nevada, Wyoming, New Mexico, Arizona, and Montana we find that they are doing but little for any except the blind and deaf who are being cared for in State residential schools for the most part. Not one of those States has six inhabitants per square mile. Compare that density of population with Massachusetts, which has over 500, and Rhode Island, which has over 600, and you will see at once the difference in the situations of the different States. The long distances they have to travel very greatly increases the cost of education in the Western States. Furthermore, there is a marked lack of State organizations that are tremendously interested in promoting education of these different types of children such as we find in the more populous States in the East. Hence, the need for Federal aid in the Western States is great. Then there are the Southern States that are providing for but a very small percentage of their children, and when we consider the income of those States we find they rank in the lowest 25 percent of the States of this Union from the standpoint of income per child enrolled in elementary and secondary schools, and when we compare them with the 10 States that rank highest in income we find that they are providing seven times as large a percentage as the Southern States.

On the other hand, we find that some of those States are spending a smaller percentage of the total income than the Southern States.

The State of Mississippi has spent almost 4 percent of its total income on education, spending a larger percentage than the State of New York, but they are actually spending per child \$19 as compared with \$124 in the State of New York.

North and South Dakota are spending less than 5 or 6 percent and yet they are spending per child only one-half as much as New York, and a little less than half that of California.

I see no way for the equalizing of opportunity in these States except through Federal aid.

Then, in the third place, we find when we turn to the wealthiest States of the Union, they are not providing for more than 25 percent of the children physically handicapped or standing in need of special help. Federal aid is needed to stimulate these States to greater effort, and if we can take as a precedent the results growing out of the Smith-Lever Act of 1914 providing agricultural extension, that has become one of the great adult education movements, the Smith-Hughes Act of 1917, which has tremendously stimulated vocational training, both acts carrying Federal appropriations, and the Vocational Rehabilitation Act of 1920, which has been equally effective in stimulating the movement for making greater and better provision for disabled citizens throughout the country.

So, the need in this field is equally great and we have reason to think will be equally successful in stimulating these wealthier States if Federal aid were supplied.

In the fourth and last place, we need Federal aid to equalize educational opportunity within the State. In connection with the State plans there must be an equitable basis of distribution of funds between rural and urban areas and among the different types of the various handicapped children. Such equitable distribution does not exist at the present time, we find the most marked inequalities. Half of the children of the United States come from the rural areas, but in the rural areas we are doing almost nothing for a good many types of physically handicapped children. The work that is being done is being done largely in urban areas, but we find marked discrepancies there, some are caring for certain types and neglecting others almost entirely. Under the set-up provided in this bill it will necessitate an equitable distribution of funds within the State. Let us add, too, it will result in much more successful cooperation with the various agencies.

For the first time in the history of this country the various organizations interested in the welfare of handicapped children have come before you united on a program of action. We wish to carry that same spirit into the various States, and through the Federal aid it becomes possible.

Now, why should the Federal Government assume this responsibility? It has many responsibilities. The first reason is this, that it is in line with desirable precedent. In 1864 the Federal Government founded Gallaudet College in the District of Columbia to provide higher education for the deaf of this country for whom no such provision had been made, and we continued to support that institution. In 1879 the Federal Government subsidized the American Training School for the Blind at Louisville, Ky., and since that time Braille books have been furnished to all classes of schools for the blind in the United States. Now, what taxpayers have objected to the use of Federal funds for those purposes?

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In 1920 we passed the National Vocational Rehabilitation Act, and that work proved so successful that in 1935 the amount of Federal aid has been practically doubled.

So we have desirable precedent for rendering Federal aid to these physically handicapped children.

Now, the Federal Government should do this because it is necessary to fill a gap in a program already inaugurated. In 1935 the National Security Act provided for medical treatment and other services for crippled children. It provided for doubling the funds for the vocational rehabilitation of children of employable age and other adults, but no provision was made for the education of physically handicapped children, and yet it has been pointed out repeatedly by those working in the field of vocational rehabilitation that it is extremely important that physically handicapped children secure the right kind of education in order to take advantage of opportunities offered by vocational rehabilitation. It has been pointed out by physicians that they must have the right kind of education if they are to profit from the medical services they have received. They are struggling against odds they cannot overcome except as they receive the kind of treatment and the encouragement and direction that only skilled, sympathetic teachers can give.

The Federal Government should furnish this aid because it has been long recognized as a policy of this Government and approved by the people of this Nation that the Government should assist citizens in distress when other means have failed, and not yet has the Government failed in any emergency, whether fire, drought, or flood.

A few years ago crime became prevalent and our local and State agencies were not able to cope with it, particularly kidnaping, the most feared of all crime. We turned to the Government for help, and the Government, through the G-men, took fear out of the hearts of parents and put it into the hearts of the criminals.

Now, if it is necessary for the Government to provide security against criminals, is it not equally the function of the Government to provide security for children when they are struggling against odds they cannot overcome without proper educational opportunities?

Finally, let me say the Federal Government should furnish this aid because it is needed to fill a gap in the conservation program. We are spending hundreds of millions of dollars in conservation and improvement of the material resources of this Nation, and we are wisely spending that amount; I think, but what are we spending to conserve the material resources as represented by the physically handicapped children of this Nation? Providing special or proper education for them is not charity, it is sound public policy. We have the choice of doing more for them now so that they will be able to help themselves, or spend a much greater amount later by keeping them at public expense. So it is sound public policy for us to render to them the assurance they much need.

Now, you ask why are we asking such a large amount at this time. The excess cost of special education in the United States at the present time is \$14,000,000. We are asking \$11,500,000. You may say, "Why not take only a million or two million?" I will tell you why. We are providing now only for the most seriously handicapped children. If you give us \$1,000,000 more we can only continue to provide for them. The case of those now most seriously handicapped are resulting from those who are less seriously handicapped. It costs from two to five times as much to educate a blind or a deaf child as one who is not physically handicapped. But when it comes to the minor handicaps, it costs comparatively little more than for the child who is not handicapped, and with this amount of money we can increase the number we are now caring for from 160,000 to between four and five hundred thousand.

In other words, we get into the field of prevention and early correction and treatment, and that makes it possible to catch up so that eventually we ought to be able to reduce the amount of Federal aid rather than come back for more. But if you give us less now we will be asking for more and the total amount consumed in the long run will be vastly greater than this amount we are now asking for.

Finally, what can we expect to accomplish if this bill becomes a law? We can expect equalization of opportunity for the children of this Nation; we can expect the people of this Nation will become a more perfect union, for what binds people more closely together than to care for handicapped members of the group? It means we are going to care not only for these children but we are giving every child an opportunity. That is held up as a goal to find in some small measure, at least, that happiness that mankind has ever sought.

Mr. Chairman, may I request permission to have inserted in the record of the proceeding the report here, which embodies supporting data for what I have said?



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Senator PEPPER. Yes.

Mr BERRY. Thank you.

From an educational point of view physically handicapped children are those who suffer from a physical defect or deficiency to such an extent that it is impossible for them to make a satisfactory adjustment to school life without the use of special instructional techniques or special equipment or without special care.

Special education attempts to secure equality of educational opportunity for physically handicapped children by providing instructional techniques, the equipment, the subject matter of instruction and the care which they require to make the most of their possibilities.

Special education is not charity but sound public policy. Few investments of the taxpayer's money have yielded as large a return as that invested in vocational rehabilitation. In one State alone the difference in the amount earned by the disabled during the year immediately preceding vocational rehabilitation, when compared with the amount earned the first year after rehabilitation, was more than five times its cost. If such results can be obtained by the special training of disabled adults who have in large measure lost the plasticity and adaptability of youth, how much more can be accomplished through the special education of physically handicapped children. It is unquestionably better public policy to spend more money today in helping the handicapped child to help himself than it is to spend many times as much tomorrow in supporting him at public expense.

When the Federal Government is wisely spending vast sums for the conservation of the Nation's natural resources, is it not the part of wisdom to spend what may be necessary for the conservation and development of the Nation's human resources?

## 1. TYPES OF PHYSICALLY HANDICAPPED CHILDREN

The major types are as follows:

(a) The blind and the partially seeing, who are without vision or without sufficient vision to read ordinary print even with the aid of glasses.

(b) The deaf and the hard of hearing, who cannot hear ordinary instruction as given in the classroom.

(c) The crippled, who must have special equipment and treatment to succeed in school.

(d) The defective in speech, who stammer or who have some other serious speech difficulty which makes it impossible for them to participate normally in classroom instruction.

(e) Delicate children or children of lowered vitality, who suffer from invisible physical handicaps; the pretuberculous, the tuberculous, the cardiac, the anemic and the malnourished. These children cannot follow the regular program of the school day without further injury to their physical condition.

## 2. NUMBER OF PHYSICALLY HANDICAPPED CHILDREN IN THE UNITED STATES

Unfortunately we have no Federal census of the physically handicapped children in the United States comparable to the excellent Federal census of farms, livestock, and crops. We have reliable information in regard to the increase or decrease of the different kinds of livestock during the last few years, but similar data are not available on the different types of physically handicapped children, nor is even the total number of such children in the country accurately shown.

Numerous efforts have been made to secure accurate information in regard to the number of physically handicapped children in particular cities or sections of the country. Upon the data secured by these scattered surveys it is possible to estimate the approximate number of children in each of the major groups of the physically handicapped.

Another method of determining the percentage of elementary and secondary school children in the United States who should be in special classes for a given type of physically handicapped children is to take as a standard the city which has the largest percentage of its enrollment in the special classes for such children. For example, Cincinnati has enrolled in sight-saving classes 0.18 percent of the total enrollment in the elementary grades and high schools. If this same percentage holds good for the United States as a whole, there are approximately 48,000 partially seeing children in the United States who require special education.

Whichever method we use of computing the number of physically handicapped children in the United States, we find that approximately 1,800,000 or 7 percent of the more than 26 million children enrolled in the public elementary and secondary schools of the United States are physically handicapped to the extent that they require special education.

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### 3. NUMBER OF PHYSICALLY HANDICAPPED CHILDREN RECEIVING SPECIAL EDUCATION

It is to be noted that only 9 percent of the physically handicapped children in the United States who require special education are actually receiving it, and not more than 25 percent of any one type are receiving special education.

Also to be noted is the inequality of the distribution of special education among the different types of physically handicapped children. The percentage of the blind and partially seeing and of the crippled who are receiving special education is approximately three times that of the deaf and hard of hearing and of the defective in speech. In this connection it should be said, however, that the great majority of the deaf as well as the blind are receiving special education. It is the hard of hearing, especially, for whom little special education has yet been provided. The history of special education for the deaf and blind in this country goes back more than a century, but special education for the hard of hearing, the partially seeing, the crippled, the defective in speech, and the delicate started about the beginning of the present century.

It has taken 36 years, or three generations of elementary and high-school pupils, to provide special education for 9 percent of the physically handicapped children who require it. At this rate 33 generations of physically handicapped children will have passed through our elementary and high schools before special education will have been provided for all who require it.

The striking disparity between the number of physically handicapped children receiving special education and the number that require it is strikingly illustrated in diagram T page 18.

In table I, page 19, is given the number of blind and of deaf children enrolled in residential schools by States for 1935-36. By referring to this table it will be seen that all but eight States reported residential schools for both the deaf and the blind. However, these eight States either have residential schools or send their deaf and blind to semiprivate residential schools or to residential schools in other States.

In table II, page 20, is given by States the number of physically handicapped children enrolled in special classes of city school systems for 1935-36. There are nine States which either failed to report or are making no special provisions for any type of physically handicapped children in their city schools. However, six of these States are sparsely settled and have no large cities. The inequality in the distribution of special education in the various States is strikingly illustrated by the fact that only 15 of the 18 States are providing special education in city school systems for all five types of physically handicapped children which are more numerous than all the other types combined.

### 4. THE COST OF SPECIAL EDUCATION

The cost of special education in residential schools for the blind and the deaf, by States, is presented in table III, page 21.

The cost of educating the 5,693 children enrolled in residential schools for the blind in 1935-36 was \$2,753,421, and for the 15,400 deaf in residential schools, \$6,311,189. However, the actual expenditures were considerably greater as a number of the residential schools which reported enrollment failed to report expenditures. The average cost per pupil in the residential schools for the blind and for the deaf which reported both enrollment and expenditures was \$652 and \$508.47, respectively. The average annual cost per pupil in residential schools differs greatly from State to State. In Massachusetts it is \$88 for the deaf and \$1,212 for the blind; but in Arkansas it is only \$326 for the deaf and \$372 for the blind.

In other words, Massachusetts is spending almost two and one-half times as much for every deaf child and more than three times as much for every blind child enrolled in its residential schools as in Arkansas.

In table IV, page 22, are given the instructional expenditures, by States, for special education of physically handicapped children in city school systems amounting to \$6,240,003. To this should be added \$2,023,702, the amount New York City spent in 1931-32 for special education, since New York City failed to report the amount spent in 1935-36. Adding this amount to the \$6,240,003 makes a grand total of \$8,263,705.

In 1935-36, \$10,695,221 was spent on the education of the blind and the deaf in residential schools. This amount added to the \$8,263,705 gives \$18,958,929, which is the approximate amount spent in special education in the United States in 1935-36. If we deduct from this total of approximately \$10,000,000 the amount it would have cost to educate these same children in the regular elementary and high schools we have left approximately \$13,500,000. This amount

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represents the excess annual cost of providing special education for 166,000 physically handicapped children. (See table V, p. 23)

The question naturally arises as to the reason for the great cost of special education. This question can best be answered by referring to diagram II, page 18, which shows clearly the special needs of the different types of physically handicapped children. In special education children cannot be instructed in large groups; individual or small group instruction is necessary. This greatly reduces the number of children one teacher can teach, thereby increasing the cost of education. In addition, there is the extra cost of special equipment, furniture, lighting, transportation, and textbooks. Also, in many cities special-class teachers are paid higher salaries because of the extra training required to teach these children.

The cost of special education also varies with the type of physically handicapped child. It costs, per annum, from two to five times as much to provide special education for the blind or deaf child as it does to educate the child who is physically normal. On the other hand, it only costs about \$10 per year more to provide special education for the child who is defective in speech than it costs to educate the child who has no physical handicap.

The cost of special education for the same type of physically handicapped child varies greatly from State to State and also from city to city within the same State. The lack of uniformity in the cost of special education is most striking.

### 5. NUMBER RECEIVING AND THE NUMBER NEEDING SPECIAL EDUCATION, BY STATES

In table V, page 23, are presented data showing, by States, the actual number of physically handicapped children who are receiving special education and the estimated number who need special education.

From a study of table V two significant facts appear: First, the States differ greatly in the extent to which they are providing special education for the physically handicapped children who require it; second, only a few States are providing special education for as many as 20 to 25 percent of their physically handicapped children.

Generally speaking, the States which are providing little or no special education for their physically handicapped children fall into two groups.

The first group consists of those States which are sparsely settled, such as Nevada, Idaho, Arizona, and New Mexico. (See table VI, p. 24.) These States have few cities, and special education is generally confined to large cities except in the case of the blind and the deaf, who are usually sent to residential schools.

The second group of States which are providing little special education for their physically handicapped children falls in the low-income class. They are Alabama, Arkansas, Kentucky, North Carolina, Oklahoma, South Carolina, South Dakota, and Tennessee. These are the eight States in the Union which have the lowest incomes per pupil enrolled in public elementary and secondary schools. (See table VII, p. 25.)

The States which are foremost in providing special education for their physically handicapped children are usually either those States which have the highest income per child enrolled in public elementary or secondary schools, or among the States which provide State aid for the education of physically handicapped children, or both.

The nine States which had 15 percent or more of their physically handicapped children enrolled in special education in 1935 to 1936 were California, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, New York, Pennsylvania, and Rhode Island. All of these States except Michigan, Minnesota, and Pennsylvania are among the first 12 States of the Union with respect to income. But Michigan, Minnesota, and Pennsylvania are among the comparatively few States which provide State aid for the special education of physically handicapped children.

State aid has resulted in special education being provided for thousands of children, especially those from rural communities or smaller cities, who otherwise would have been neglected. [Reading:]

"The great cost of special education is one reason handicapped children are so generally neglected in the smaller communities and in the rural districts. School districts which are taxed to the limit of their capacity to provide the traditional education for the average child are in no mood to add to their financial burden to provide special education for the handicapped child. There seems to be little hope of making adequate provision for the education of handicapped children in these poorer districts without State aid."

But what chance is there of States in the lowest income group providing State aid for the special education of their physically handicapped children when they find

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is difficult if not impossible to provide adequate education for the children who are not handicapped. North Dakota and South Dakota are spending, respectively, 5.57 percent and 6.13 percent of their income on their public and secondary schools, as compared with 3.60 percent and 3.35 percent for California and New York. Yet North Dakota and South Dakota are actually spending per pupil enrolled in public elementary and secondary schools less than \$60, whereas California is spending \$111 and New York \$124.

Or compare what California and New York are spending per pupil enrolled with the \$19 spent by Mississippi. Yet Mississippi is actually spending a larger percentage of her income on elementary and secondary schools than either California or New York, although the latter are actually spending five and six times as much per child. What hope is there that States such as Mississippi, North Dakota, and South Dakota can provide adequate State aid for their physically handicapped children?

### 6. NEED FOR FEDERAL AID

(a) Many States do not have sufficient income to enable them to provide special education for their physically handicapped children. The income of Massachusetts, New York, and California per pupil enrolled in public elementary and secondary schools is more than three times as great as the corresponding income of Alabama, Georgia, Tennessee, Kentucky, North Carolina, South Carolina, and Mississippi. It is not surprising that the latter States are providing special education for less than 2 percent of their physically handicapped children, as compared with 17 percent for California, New York, and Massachusetts.

(b) To enable sparsely settled States and Territories such as Nevada, Wyoming, New Mexico, Arizona, Idaho, and Alaska to provide special education for their physically handicapped children. Compare these States, no one of which has as many as 6 persons per square mile, with Massachusetts and Rhode Island, which have respectively, 528 and 644 persons per square mile.

The great distances to be traveled and the lack of State-wide private organizations interested in the physically handicapped child greatly increase the cost of special education and retard its development.

(c) To stimulate the wealthier States to provide special education for a larger percentage of their physically handicapped children. At the present time no State is providing special education for more than approximately 25 percent of its physically handicapped children. Federal aid for agricultural extension, agricultural and trade education, and vocational rehabilitation has resulted in a remarkable development of these different types of educational work. The need for a similar development in the field of special education is equally great.

(d) To provide for a more equitable distribution of special education within the States between rural and urban areas and among the different types of physically handicapped children. At the present time there exist the grossest inequalities in the distribution of special education. Little provision is being made for the physically handicapped children in rural areas, and some types of physically handicapped children are almost wholly neglected in many urban areas.

(e) To make it possible to provide special education for the less seriously handicapped children. At the present time special education is largely confined to the children who are the more seriously handicapped, and comparatively little is being done for those with minor physical handicaps, although the former are in large measure recruited from the latter. Not until early correction and prevention receive more active attention can we hope to reduce in any marked degree the number of the physically handicapped, and until more money is provided for special education we can scarcely hope for much change in existing practice.

### 7. WHY THE FEDERAL GOVERNMENT SHOULD PROVIDE AID

(a) To fill a gap in the program which the Government has already inaugurated for the care, treatment, and training of the physically and socially handicapped. Under the Social Security Act of 1935 Federal aid is provided for the support of dependent children and for medical service for crippled children, and vocational rehabilitation is continued for disabled children of employable age. Yet no Federal aid is provided for the education of physically handicapped children. Without special education of crippled children the medical care and treatment which Federal aid has made possible is not sufficient to prepare these children to live happily and successfully with their normal fellows. Without special education, physically handicapped children are not prepared to make the most of the vocational training made possible by Federal support of vocational rehabilitation.

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If the program now supported by the Federal Government is to be effective to the highest degree, it is imperative that Federal aid be provided for the special education of physically handicapped children.

(b) It is the function of the Federal Government to help its citizens who are in distress when other means are inadequate. In times of drought, flood, and fire our Government has never failed to respond promptly and effectively to the cry for help. When State and local forces were unable to protect children from the most feared of all criminals, kidnapers, the appeal to the Government was not in vain. Is it not just as much a function of the Federal Government to protect handicapped children from that insecurity which results from a struggle against odds they cannot overcome without adequate education?

(c) To bridge a gap in the Government conservation program. The Government is wisely spending huge sums in the conservation of the material resources of this country. Is it not even more important that the Government spend what may be necessary to conserve the human resources of this Nation as represented in its handicapped children? Under existing conditions no part of the Nation can suffer and no part can prosper without affecting the whole.

#### 8. WHAT FEDERAL AID CAN ACCOMPLISH IF SENATE BILL 1634 BECOMES A LAW

(a) Marked progress in the equalization of educational opportunity for the physically-handicapped children among the various States.

(b) Equalization of educational opportunity within the States between rural and urban areas and among the different types of physically handicapped children.

(c) Increase by approximately 300,000 the number of physically handicapped children receiving special education.

(d) Decided improvement in the organization and supervision of special education.

(e) Better State legislation affecting the education of physically handicapped children.

(f) Make more effective the work of the Social Security Act as it relates to the care for crippled children and to vocational rehabilitation.

(g) More attention will be given to minor physical defects and to prevention.

(h) More accurate enumeration of physically handicapped children.

(i) More interest on the part of the general public in the care, treatment, and training of physically handicapped children.

(j) Marked improvement in methods and subject matter of instruction used in the special education of physically handicapped children.

(k) Much closer cooperation among local, State, and national organizations interested in the care, treatment, and training of handicapped children.

(l) A decided increase in the amount of research and experimentation in the field of special education.

(m) Will result in special education for physically handicapped children becoming an integral part of the public-school system.

(n) Will develop in the States and local communities a greater sense of responsibility for the education of physically handicapped children.

(o) A reduction in the per capita cost of special education.

(p) A marked increase in the number of teachers adequately trained to teach physically handicapped children.

#### STATEMENT OF JOHN W. STUDEBAKER, UNITED STATES COMMISSIONER OF EDUCATION

Mr. STUDEBAKER. Mr. Chairman, 2 years ago when the social-security bill was before Congress I appeared before a committee of each House to present a brief report in behalf of a phase of social security which was not provided for in the Social Security Act—that phase having to do with the education of physically handicapped children.

The Office of Education, and organized education in general, have been interested in this problem, as you know, for many, many years. We are still interested in it. It is a problem that certainly is not unsolvable.

We made a favorable report on this bill, sponsored by the International Society for Crippled Children; but as you know, Senator, the procedures require that all bills be checked by the Bureau of the Budget to ascertain whether or not they would lead to Federal expenditures beyond reason. I do not have an official report from the Bureau of the Budget, but an informal report indicating that the Bureau of the Budget will find it necessary to report unfavorably on this bill as being not in accord with the fiscal policy of the Government. Therefore, as you know, it is



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my duty to make that fact clear here. All that I say, therefore, must be said in the light of that fact. I am not here to discuss the general policies of the Government, and I would not appear here to discuss the fiscal policies of the Government. That is not my province. I am here to present just one definite point of view on this whole problem of handicapped children.

For 20 years I was an administrator of a system of schools in a local community and therefore am familiar with the problem of facing squarely the need of various types of young people and adults in the system of education over which I presided. For all of those years I had experience with the various problems involved in the education of highly specialized groups, and I took a great deal of interest in attempting to solve the difficult problem of educating physically handicapped children.

It was clear to me, and it has become increasingly clear since I have been in the Office of Education in Washington, that the natural tendency on the part of the masses of people has been, and probably will continue to be, to provide fairly adequately for the masses of children, neglecting the minority groups. The fact today is that a huge majority of the States and local communities of this country are not giving physically handicapped children a square deal in the field of education.

Now, the reason is, first, that most of the people's children are not physically handicapped; therefore, the large majorities are not immediately interested.

Second, special provision must be made for the education of physically handicapped children. Those provisions must be so special that they are much more expensive per child than the provisions which seem to be needed for the so-called normal child. Whenever you put those two conditions together it is bound to follow that the development in a field involving those conditions will be rather slow unless in some way there is an expression of real vision in the social structure that will put a stimulus behind the movement to correct that great social weakness.

The result is that, where progress has been made in the States in the correction of that weakness, the States have put the power of the commonwealth behind the problem of educating physically handicapped children by providing to the local communities all or almost all of the difference between what it costs those local communities to make provision for the education of so-called normal children and what it costs them to make special provision for the education of physically handicapped children. That process is so obviously necessary that I am sometimes amazed that people generally have not recognized it more than they have in connection with physically handicapped children. I mean the process of drawing upon larger areas for the support of special schools or special types of classes.

This is really the principle behind the organization of secondary schools in this country. If we go into any community of some size we may find 15 or 20 elementary schools but only 1 high school. The students of secondary school age, therefore, have been gathered together in one place, or, rather, under special conditions, in order to give them the special treatment which their needs demand. In other words, in such a community secondary school students are relatively rare.

Now, these youngsters who are physically handicapped are even more rare, relatively, than secondary school students. They cannot be taken care of in the set-up that we now have for education which was never designed for physically handicapped children. It was designed for the so-called fictitious average child, and if a child is a reasonably normal child physically he can adjust himself to the rough-and-tumble of the ordinary elementary or secondary school. Physically handicapped children cannot survive those conditions and the result is that thousands and thousands of them are not being educated in the United States today, simply because they cannot get to the school to be educated, and if they get to the school that exists it would not fit their needs.

The facts that I have before me indicate that there are approximately 2,000,000 children in this country who are so handicapped physically that they need special school facilities, a special kind of teaching and special equipment, and, in many instances transportation to the point at which they can be educated, exactly as we have 6,000,000 who are so special in their needs that they go to what we call high schools.

Now, these 2,000,000 who are physically handicapped—

Senator PERRIN. Pardon the interruption. What is the approximate college enrollment in the United States?

Mr. STODOLSKY. About 1,200,000.

Senator PERRIN. In other words, it starts off in elementary schools with about what number?

## EDUCATION FOR PHYSICALLY HANDICAPPED CHILDREN 13

Mr. STUDEBAKER. Oh, say, 24,000,000.

Senator PEPPER. And secondary schools?

Mr. STUDEBAKER. I guess it would be about 22,000,000, let us say, in the elementary schools; 6,000,000 plus in the secondary schools, and 1,200,000 in the higher educational institutions.

That question prompts me to say that an even more extreme illustration of the attempt that society has made to care for relatively rare types of students is in the higher educational institutions called the State universities. The whole State is taxed for the benefit of those few who go to the State university. The States that have had real vision with respect to the education of physically handicapped children are those States in which the whole State is taxed to secure the revenue with which to enable communities to do for physically handicapped children what the State is trying to do for the few who go to the university, in terms of their particular needs.

There are only about 163,000 physically handicapped children in the United States out of 2,000,000 who are receiving the special school facilities which their needs demand, leaving more than 1,800,000 children in the United States who are struggling along trying to become social assets in this complex and competitive world, who start life physically handicapped; and we continue to handicap them because we do not give them a chance educationally.

The Federal Government has made some real progress down through the years in recognizing the need for services for the physically handicapped. It has created, in the field of vocational rehabilitation, both physical and educational services for handicapped people who have arrived at the age of employability. Vocational rehabilitation operates through the United States Office of Education, and through the State departments of public instruction, and on down to the local communities, with Federal financial assistance giving the stimulus to the States and local communities to provide physical and educational service to physically handicapped persons called adults—persons over the age of employability, as determined by the laws of the State.

Two years ago the Social Security Act provided Federal financial assistance to the States for the purpose of giving medical and some types of social service to children who are crippled.

I have a chart here that I want to distribute, and, if possible, to put into the record, to show how we have visualized what has been done. That chart shows that for children and adults in the field of medical and physical rehabilitation, and also vocational rehabilitation, the Federal Government is now taking an active part: under social security, under vocational rehabilitation, through the college for deaf students at Columbia Institution for the Deaf, through reading and printing service for the blind provided through the Library of Congress and the American Printing House for the Blind. But down in the right-hand corner you will note a large rectangle indicating that nothing is being done by the Federal Government. In other words, the Federal Government is now providing for the medical and certain aspects of the social care of crippled children. Other features of Federal service are providing physical and educational assistance to adults, but the Federal Government is not touching this very vital problem of education of the physically handicapped children, which is certainly a necessary counterpart to the medical assistance and social care of physically handicapped children now provided for under the Social Security Act.

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DEPARTMENT OF THE INTERIOR,  
OFFICE OF EDUCATION,  
Washington, D. C.

*Federal services for the physically handicapped*

	Physical	Social	Educational
Adulthood	Physical attention for physically handicapped adults and young people of employable age, through co-operation of States with Vocational Rehabilitation Act.	Occupational adjustment of physically handicapped adults and young people of employable age, through co-operation of States with Vocational Rehabilitation Act.  Financial assistance to needy blind, through Social Security Act.	Vocational training of physically handicapped adults and young people of employable age, through Vocational Rehabilitation Act.  College training for deaf students at Columbia Institution for the Deaf  Reading and printing service for the blind through Library of Congress and American Printing House for the Blind
14-16 years	Medical aid for crippled children, through Social Security Act.	Social care for crippled children, through Social Security Act.	
Infancy			NOTHING

Mr. STUDEBAKER. It seems to me, therefore, that in the interest of genuine social security for those handicapped individuals called the physically handicapped, the Federal Government, sooner or later, when its fiscal policies will permit, by the sheer logic of its previous action, should do something for the education of these physically handicapped millions.

I think no one would say that a child who is crippled, who is put in a hospital and whose deformity is corrected as much as surgery is able to correct it, and then given convalescent care, but who is still crippled, is socially secure until he is educated in the way in which he needs to be educated in terms of the things he is able to do in this competitive life. I have seen hundreds of them myself who have been hospitalized and had after-care, who could not get to a schoolhouse, who needed to be taken to a schoolhouse. That is one of the costs of education—transportation to the schoolhouse. They need to be taken to a teacher and to a school so equipped that their particular needs are met by a special educational process and not thrown into the ordinary type of school.

I confidently believe that when the fiscal policy of the Government will permit, the Federal Government should appropriate a reasonable sum of money to be distributed to the States on the condition that the States give evidence that they have established laws which provide that the respective States will assume this responsibility in the States as a State function; by which I mean that the States utilizing Federal aid will create laws that will say to the local communities, "We propose to help you to make up the difference, or practically all of the difference at least, between what it costs you to educate your normal children and what it costs you to educate the physically handicapped children." If we did that we would witness in this country, within the next 5 years, more progress in the education of physically handicapped children than we have yet made in the United States. Now, that has been the effect wherever a State has done it, but I think not more than 20 States are doing anything in that field.



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In closing I should like to say, as I have tried to think about the philosophy of government in a democracy and the philosophy of education that would fit that philosophy of government and the obligation of the Federal Government, and as I have looked back over the history of Federal assistance to education through the land-grant colleges, vocational education, and measures that have afforded Federal assistance to the people in the States in other areas of life, I cannot mention a single instance in which the Federal Government has participated, or is now participating, which is any more, if it is as justifiable, as the thing we are talking about this morning. In other words, if there was ever any justification at all for the Federal Government participating in stimulating the States and aiding the States to do something for the social welfare of the country certainly we are talking about a thing this morning that has in it all of the elements of value, social value, that can be found in any other endeavor in which the Federal Government thus far has engaged.

Now, Mr. Chairman, I think that is all I have to say, unless you care to ask me some questions. We have some youngsters here this morning who are going to participate in a little demonstration that has been arranged, some children from the Maryland School for the Blind, and some others who will demonstrate the actual possibility of teaching children lip reading.

(The following occurred during a demonstration by Andrew Birmingham and Frances Wright, both totally blind, in the use of the Braille writer (typewriter), and reading and writing in the Braille system:)

Senator PEPPER. What is your name, young man?

Mr. BIRMINGHAM. Andrew Birmingham.

Senator PEPPER. And how old are you?

Mr. BIRMINGHAM. 16 years of age.

Senator PEPPER. Do you go to any school for the blind?

Mr. BIRMINGHAM. The Maryland School for the Blind.

Senator PEPPER. How long have you been a student there?

Mr. BIRMINGHAM. I have been a student there for 10 years.

Senator PEPPER. Mr. Bledsoe is the superintendent of the school.

Son, can you give us an exhibition? Would you write something for us on your machine?

Mr. BIRMINGHAM. Yes, sir.

Senator PEPPER. Now, this is Andrew Birmingham who is a student at the Maryland School for the Blind. He is going to give us an exhibition on the Braille writer. He is a student in the ninth grade of this institution and has been there for 10 years.

Mr. BIRMINGHAM. I would like to say, Senator Pepper, that this Braille writer has six keys on it which are divided into six points which go up into a cell. That writes letters which permit me to read like any so-called normal person would read print. I would like to write a few things on this Braille writer to show you just how we get along with it.

I also want to say, Senator Pepper, that we need just what Dr. Studebaker has said.

Now, I shall write something for you. First I will write "Senator Pepper of Florida"—I have written it. Now, I will write "Senator Murray of Montana"—I have written it. Now, I will write my own name—I have written it.

Senator PEPPER. That is very fine, Andrew. That is a very interesting exhibition. How would you describe the paper that you used?

Mr. BIRMINGHAM. I should say it is slightly thick. We have different sizes of paper that we write on—small, middle size, and large paper.

Senator PEPPER. That is very fine, Andrew. You have given us a very good exhibition.

Mr. STUDEBAKER. Andrew, can you write something, for instance, that the little girl can read? You write something on there and hand it to the little girl and see if she can read it for us.

Mr. BIRMINGHAM. I have written it.

Mr. STUDEBAKER. What does it say, Frances?

Miss WRIGHT. "Mary had a little lamb."

Senator PEPPER. What is your name, little lady?

Miss WRIGHT. Frances Wright.

Senator PEPPER. Where do you go to school, Frances?

Miss WRIGHT. The same place that Andrew goes.

Senator PEPPER. And you are in what grade?

Miss WRIGHT. First grade.

Senator PEPPER. How old are you?

Miss WRIGHT. Eight years old.

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Senator PEPPER. You are a very pretty little girl and you read very well. Would you like to read anything else for us now? Maybe you would like to read something out of your book.

Miss WRIGHT. I don't care.

Senator PEPPER. Suppose you read something for us. We would like to hear you. You have a very pretty voice.

Miss WRIGHT (reading from a Braille book):

"What would you think if you had no real name? How would you like to be called Blue Eyes? If you were an Indian boy you might have just such a name. Some Indians never name their boy babies. They call them Round Face or Blue Eyes. If a boy baby laughed very much, perhaps he was called Laughing Eyes. When a boy grew up and did some brave deed he was given an Indian name."

Senator PEPPER. Now, can you write for us? Would you write on the slate there for us?

Miss WRIGHT. I could, but I don't know what to write.

Senator PEPPER. You write your name.

(Miss Wright demonstrated by writing on a Braille slate which consisted of a wooden board, a paper placed on the board, a perforated metal strip to permit the indentation of Braille characters by means of a small punch.)

Senator PEPPER. All right. Now, you read it for us.

Miss WRIGHT. Frances Wright.

Senator PEPPER. That is very good and very interesting, Frances. We thank you very much.

Thank you very much, Andrew. We enjoyed having you here. Won't you come back and visit us again sometime? If you would like to go over to the Senate, any of you, and hear the debates for awhile we will make a place for you.

(The following was a demonstration in lip reading by Mary Lou Jones, Joanna Sturgis, Alyce Bean, Fern Spencer, and Virginia Clare, all between the ages of 6 and 8 years old, under the supervision and direction of Dr. Ignatius Bjorlee, superintendent, and Miss Kathleen E. Noland, teacher, Maryland State School for the Deaf, Frederick, Md. A number of toys resembling a ball, cow, top, dog, cat, rabbit, horse, frog, and a doll were placed before Senator Pepper and the girls in turn would pick out the object called for by reading the lips of Miss Noland as she formed the name of each by her lips in a tone barely audible to the ear. Then Miss Noland asked the girls to name the objects as she picked them up, which they did in very faithfully reproducing the sound. Then Miss Noland asked the girls to perform certain acts, such as bowing, clapping hands, folding arms, etc., which they did very promptly. Then they were asked to demonstrate their ability to read and write which they also did without any apparent hesitation.)

Dr. BJORLEE. I just want to explain, Senator, that these are not hard-of-hearing children, they are totally deaf children. Two years ago they did not have any language at all. This shows you the difficulty of imparting such language as they now have.

Senator PEPPER. I want to take this occasion to thank Miss Noland and the very beautiful girls who participated in this exhibition. They have given us a great deal of pleasure, and you are certainly a very capable teacher, Miss Noland. I would like the record to show that.



## Calendar No. 1523

75TH CONGRESS }  
3d Session }

SENATE

{ REPORT  
{ No. 1459

## CITY OF NEW YORK

JANUARY 5 (calendar day, MARCH 7), 1938.—Ordered to be printed

Mr. BURKE, from the Committee on Claims, submitted the following

## ADVERSE REPORT

[To accompany S. 684]

The Committee on Claims, to whom was referred the bill (S. 684) for the relief of the city of New York, having considered the same, report adversely thereon with the recommendation that the bill be indefinitely postponed.

The bill provides for the payment of \$764,143.75 to the city of New York, said sum having been expended in enrolling, subsisting, clothing, supplying, arming, equipping, paying, and transporting troops employed in aiding to suppress the insurrection against the United States in 1861 to 1865; \$121,054.11 of the amount sought to be appropriated represents interest.

This bill has passed the Senate a number of times. Your committee, however, recommend that the present bill be disapproved. Seventy-three years have elapsed since this claim accrued. In the opinion of your committee, the Congress should not be called upon to consider and pass upon these old claims. It is accordingly recommended that the bill do not pass.

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Mr. PEPPER. Thank you very much, Mr. Chairman.

Mr. BRADENAS. Thank you very much, Mr. Pepper.

I think, in light of the nearly 40 years now since introduction of Mr. Pepper's bill, our friends in the Department of Health, Education, and Welfare can perhaps better appreciate why it is with a degree of skepticism that the call for another study falls on the ears of the gentleman from Indiana, as well as the gentleman from Florida, a little emptily.

Mr. LEHMAN, a distinguished member of this committee, from your home territory, Mr. Pepper, is recognized.

Mr. LEHMAN. It is good to see you here. You are a pioneer and fore-runner of the kind of legislation we are working on. I might point out that your report of young people dropping out of school and potential criminality only reinforces my opinion that the social and maladjusted schoolchild is also very handicapped and in that sense he should be included and funded and legislated for as well as those that are physically and otherwise handicapped. I think it is very relevant that you brought out this relationship to the problems of our youthful criminals in this country, and I am just happy you were here to do that.

Mr. PEPPER. Thank you. Of course, we in Florida are told that our very knowledgeable and dedicated colleague is a member of this distinguished subcommittee because he knows the subject of education and has contributed immeasurably to the improvement of education in our area and we are pleased he is here with the subcommittee.

Mr. BRADENAS. Thank you.

Mr. QUIE.

Mr. QUIE. I will just thank my colleague for his testimony, and I was just looking at the date you introduced your bill—February 19, 1937. It amazes me that a young man like you could have been around here to introduce the legislation in 1937.

Mr. PEPPER. Thank you very much.

Mr. QUIE. I used to read about you when I learned how to read.

Mr. PEPPER. It strikes me this is the attitude we had in 1937.

Mr. BRADENAS. Thank you very much, Mr. Pepper.

Mr. PEPPER. Thank you very much, Mr. Chairman.

Mr. BRADENAS. Next is our final witness, and I would call on the gentleman from Minnesota, Mr. QUIE, to present him.

Mr. QUIE. I would like with great pleasure to introduce Dr. Maynard Reynolds of the University of Minnesota, and accompanying him is Dr. Bruce Balow. I should tell you something about Maynard.

It was because of him mostly that I have an interest in special education for the handicapped. In 1957 I was fortunate enough to serve on an interim commission that was operating in Minnesota. The chairman was then Senator Elmer Anderson, who later became the Governor. The man who testified there and gave us more information than anyone else was Maynard Reynolds. He had a vision and concept at that time about education of the handicapped. It is interesting also that the State of Washington had done a great job in his field which we followed in our 1957 legislation and I was proud to be an author of one of those bills.

But since that time I have known Maynard and watched his work and have been deeply impressed with the kind of insight he has on the problems of the handicapped and how they best can be served.

One thing I recall so well was especially his teaching of the mentally retarded. A person who loves a child makes a big difference, but when the person received the kind of training that Dr. Reynolds made available at the University of Minnesota, then the results were outstanding that a person could see. What we would do is go in the beginning of the year and then at the end of the school year to see what had happened to those children. It really struck me that a well-trained teacher in special education has to see results that the teacher of the nonhandicapped were never able to witness in that way.

Also I was struck by the realization that the parents were important to the development of the child. This seemed to be a natural part of special education. I look forward to the testimony of Dr. Reynolds, Mr. Chairman, and Bruce Balow with you, because I present to you a man who is probably more knowledgeable on the subject than anybody else in the country.

Mr. BRADENAS. Thank you very much, Mr. Quie, and we are very pleased to hear from you, so go right ahead.

**STATEMENT OF MAYNARD REYNOLDS, PROFESSOR, SPECIAL EDUCATION, UNIVERSITY OF MINNESOTA, ACCOMPANIED BY BRUCE BALOW, PROFESSOR, DEPARTMENT OF SPECIAL EDUCATION, UNIVERSITY OF MINNESOTA**

Mr. REYNOLDS. Thank you very much, Mr. Chairman and members of the committee and staff.

I feel very honored to have your request to participate in this hearing, and I am pleased to be joined by my colleague, Bruce Balow. We would like to present a very brief joint statement and then move quickly to questions.

We have given you a written statement and we propose not to read it. Instead, we would like to identify one or two key issues that we would most earnestly urge you to reopen for consideration.

Before proceeding, however, I must say that I appreciate very much your leadership in this area of educational concerns. Congressman Brademas, I think all of you will understand how proud we are of Congressman Quie for his interest and leadership in this area.

What you propose in H.R. 70 is a very generous package of supports for handicapped children of the Nation. I can't imagine that there is any topic on which we ought to join together more readily than in support of programs for the handicapped children of this Nation, many of whom are still neglected. So, I wish to be recorded in favor of the main features of this bill, H.R. 70.

I hope you will forgive us if we seem critical in some of the particulars. We think we owe you a very candid conversation about those particulars where we see problems. Let me move directly to what I consider to be the main problem in H.R. 70.

This has to do with the categorizing of children and a system of money flow on the basis of individual children in categories. Much of the thinking about categories of handicapped children in education is left over from the last century when children were sent off to very specialized, set-aside institutions. They moved into the public schools very slowly in the first half of this century, mostly in the form of labeled, categorized children in special classes and schools. Recently,

we have learned how to be more inclusive of exceptionality, that is, how to deal in more inclusive ways with children. We have negotiated for increasingly integrated situations for the handicapped and made a big start in getting away from crude categories.

Of course, a good many of the labeling processes are still with us. They tend to be interpreted or stigmatic and negative by many children and their parents, particularly in the case of children who are only mildly or moderately handicapped. As Dr. Martin said this morning, higher percentages of children who live in the cities find their life situations in disorder. Many of them have grave difficulties learning in school. The parents of poor and minority group children are expressing to us many feelings of resentment and resistance about the categorizing and labeling of their children.

There is also a rising concern within the special education profession. I think it is fair to say, about the continued use of categorizing and labeling procedures. If H.R. 70 were passed in its present form, for the first time we would be forced by the Federal Government to negotiate child by child, category by category, with Federal offices in order to induce money flow in behalf of the handicapped. We think that that requirement would be most unfortunate and inconsistent with desirable trends in our society.

Many different systems of categories are used in different parts of the country and in many places people are learning to serve children without use of crude kinds of categories. Enormous effort tends to be absorbed in merely regulating boundaries of categories whenever they are used and we would foresee a great waste of effort in that kind of activity if H.R. 70, in its present form, should become law.

Let me tell you a story from Minnesota. In the early 1950's we had a system whereby, for every mentally retarded child who was identified and placed in a special program, the local school system received \$250. The physically handicapped child and the blind child qualified his district for \$400 per child. In our cities where the limit of special class size for the retarded was 18 children the special classes were always full, therefore, they drew 18 times whatever the allotment was per child. In the rural areas, however, there might be only five handicapped children within one district or region. So, if they launched a special program, the costs were about the same as in the city but the State contribution in covering costs was much less. It was very difficult in those rural areas to mount a program. We had communities in our State where children were categorized and placed in special programs simply because the CEA received funds on that basis.

Congressman Quie, at that time a State legislator, and several of his colleagues, formed a new plan whereby the major cost item in conducting programs for the handicapped children became the unit on which the money would flow. The special teacher and other personnel were made the funding unit. They put the funding of the State on a personnel unit rather than on "child in category" and made it possible for specialists to engage the problems of handicapped children on a broad front, including preventive programs, early education programs, and supportive programs to regular teachers as well as in special classes and special schools.

As that change occurred we saw the leadership in special education move its efforts to real programmatic leadership rather than to cate-

gory boundary regulations. In Minnesota we may have the most traceable, accountable system of special education in the Nation. It is very clear where the money is going and who is responsible for services to exceptional children.

Dr. Balow and I sometimes sound very critical because we have wanted to raise serious questions about H.R. 70. But we truly wish to be constructive. One of the ways we have tried to express ourselves in a positive vein is to rewrite H.R. 70 in a form which would get all of us out of a problem.

I should like now to turn to Dr. Balow who will outline the alternatives we wish to present to you.

Dr. Balow. I would be delighted to be able to do that, Mr. Chairman.

May I first make several corrections on material which we have presented to this committee. The printed statement contains one omission which is to be found on page 4 of the statement, line 6. The sixth line should read "of the bill, specifically section 2(4)" and then going on to "section 3(1)," et cetera.

We have brought two different versions of H.R. 70 here on which we have written changes which comprise our recommendations. We put little red marks on one version, which is our "essential professional personal" version; the second unmarked version we talk about money flow through percentage of total expenditure for handicapped children.

On that second version, on page 3 of our copy, which is under the definitions part of the bill, section 3(3), line 15, our current version reads: "The average for handicapped children." It should read: "The expenditure for handicapped children."

Those are two minor clerical corrections, but we think they might be important.

Now, I would like to suggest to you the major points that we are trying to suggest in the two versions of H.R. 70. But first, I wish to reiterate Professor Reynolds' very strong support for the general concept of Federal aid, which is very badly needed for handicapped children in this country.

On page 2, section 2(a)(4), we add a note about the significant proportion of the severe handicaps suffered by children which we believe could be prevented or ameliorated by educators.

Mr. BRADENAS. Would you move the microphone a little closer?

Mr. Balow. I am sorry. Page 2, section 2(a)(4): We are trying to add a notion that much of the problem could be prevented or ameliorated if special helps were provided very early. That is preparatory to the recommendation that supports be provided for children from zero to age 21, not simply from age 3 to 21. I believe that throughout the profession there are many illustrations of the very effective and important work that can be done prior to age 3.

A second point that we believe is important is found on page 3, section 3(1), which extends the definition of handicapped children so that a handicapped child need not only be among the traditional categories, but on a behavior basis, the handicapped would include those who for any other reason are severely handicapped in ability to proceed with their schooling under ordinary arrangements and thus

need special help in order to prevent their becoming more severely handicapped.

A third point is a critical point in our judgment. We strongly urge the committee to consider substituting, for the per-pupil expenditure language, a different funding unit or plan. We have proposed two possibilities. On the one hand, an emphasis on the essential professional personnel to carry out the specialized activity or, on the other hand, simply calculating the expenditures for handicapped children and paying a proportion of those expenditures.

On page 7—

Mr. BRADENAS. Would you repeat that second alternative?

Mr. BALOW. Yes, the second alternative is simply to aggregate statewide expenditures for education of handicapped children and then for the Federal Government to pay a proportion of that expenditure. That is not an excess cost formula. It is a straight-on proportion of the amount of the cost of educating handicapped children.

Then on to page 7, there are figures, section 5(a)(2) we are inserting 50 percent of the cost of essential personnel on the one version and, in the other, 50 percent of the cost of the education of handicapped pupils, but we are not making an argument or a case for the 50-percent figure per se. Our belief is that the concept is what is critical and that in its wisdom the committee will come to a percentage figure if it chooses to follow either of these recommendations.

On page 9, section 6, we are recommending that the uniform national standards be replaced by standards presented in State plans as called for in section 7. If there must be national standards rather than State standards, we would urge that they be procedural rather than substantive by separate categories or aggregates of categories.

Those are the major suggestions, Mr. Chairman, that we have. There are several others that you will find in our two versions of the bill but we will not take time to discuss them now.

Mr. BRADENAS. Thank you very much, Dr. Reynolds and Dr. Balow, for what is obviously a most carefully prepared, thoughtful statement on the proposal. Let me assure you, as the one who introduced H.R. 70, that I certainly welcome any proposed suggestions in the very constructive spirit in which you have given them and to assure you further that we will look very carefully at the proposed revisions you have suggested.

Having said that, let me put a couple of questions to you. One of your expressions of concern, I take it, is that H.R. 70 would unduly classify or label handicapped children, if I understood rightly what you were saying. Now the bill does mention categories, mentally retarded, blind-deaf, for example, but it does not require that children be so labeled in the service system, nor does it require that programs be established along categorical lines. So I put this question to you:

If, as is the case, I am sure you will agree, we have limited resources in the country, and if there is a population in our society that is highly vulnerable—in this case, handicapped children—how can we assure that with limited resources we are going to be able to reach the vulnerable children unless, in some way, we make an effort to define the population and to establish procedures to assure that they are being served?



We have had some experience on this committee with some more general funding programs such as title I of ESEA, Head Start, vocational education, revenue sharing, which persuades me that handicapped children do not receive their equal share of the resources. Now, how can we, to reiterate, assure that the vulnerables in the society, in this case, handicapped children, get the services they should have if we don't try to define who they are and establish some system of accountability to be sure they are being appropriately served?

Mr. REYNOLDS. I share your concern. What Professor Balow and I are suggesting, on the basis of experience of almost 20 years by Minnesotans, is that you can maintain a target on handicapped children without requiring that each individual child be put in a category. To use an analogy: If you train cardiologists and say that they must be employed in a programmatic framework to deal with people who are a high risk or who have heart problems, and if you review their performance, I don't know that you would need to make reviewable in State and Federal offices the thousands of protocols concerning these individual patients. What we are suggesting is that one way of maintaining a very clear target on handicapped children is through a focus on personnel who have committed themselves to that work. They can be held accountable through statistical reports and the like, but you should not require them to create rosters of individual children by "category."

You will not get the kind of accountability or focus you want if you have 18,000 individual protocols coming up from Philadelphia, 40,000 from Detroit, and 10,000 from Minneapolis.

In Minnesota we have maintained a target on handicapped children as well as in any State and better than most, I think. On the other hand, it is quite possible, Congressman, to give Federal money away on the basis of handicapped children in categories and then to have the money dissipated in ways which are not closely linked to the problem. When you put your money on professional personnel, you are dealing with the item which represents 80 to 85 percent of the cost of special education programs and you can be sure about who is accountable for solving the problems you define.

Mr. BRADY. I have learned to have a degree of skepticism with respect to the omnipotence and omniscience of professional personnel, particularly in the field of education. If I were to recite to you some of the troubles we have had with "professional personnel" in trying to define "financial need" at colleges and universities in this country as we worked on the Higher Education Act of 1972, I think you would understand why I have a degree of skepticism about that.

But, let me respond to what you said in this way, Dr. Reynolds. I don't think I have suggested for a moment that it is easy adequately to define various categories of the handicapped—we have been learning that in the subcommittee hearings. But what I take you to be proposing, with your suggested revision on page 3, section 3, line 11 and following, is even more greatly to compound the difficulty in that you say —

Handicapped children includes the mentally and physically handicapped and those who, for any other reason, are severely handicapped in their ability to proceed with their school under ordinary arrangements.

Now what that means is that if a Vietnam orphan, for example, is adopted by a couple in the United States and is put in school, unquestionably he is going to come within the rubric of your definition here if I understand the meaning of the English language. I, for one, would not for a moment suggest that that is not a child who deserves some particular attention.

But I think that in terms of what we have generally thought about as handicapped children, physically, and mentally handicapped, you are moving in a substantially different direction and what you are doing reminds me of what my friend and colleague, Mr. O'Hara, is seeking to do in the amendment to title I that he will offer on ESEA next week: namely, to move away from the correlation that we have concluded exists between educational deprivation and economic deprivation, still more broadly, to open up title I, and move away from the assumption of that correlation.

What troubles me about moving in that direction is precisely what troubles me about your proposed revision here, namely, that in the name of seeking to be more sensitive to the problem of defining categories, you will be watering down our capacity to deal with the physically and mentally handicapped children in their education.

Have I made clear my reservation about your proposal? Do you have any comment on that?

Mr. BYLOW. Yes; Mr. Brademas, I think you have been very clear. My response would be that one would not have to accept the more open definition. We regard our definition of "handicapped" as a far more functional, more behavior classification of handicapped going to child need rather than to etiologic or psychological and medical definition.

Even if one did not accept that, however, we would want to maintain a focus on two things: One, we do not quarrel with some kind of definition in the bill, as you can see, of handicapped children. We are simply trying in this particular instance to broaden the definitions a little bit to make them more useful educationally.

Mr. BRADEMAS. Could you give us some examples of the kinds of children who might be included within that expanded phraseology?

Mr. BYLOW. I think your example is excellent. There are several in our written statement which we can go through, if you would like. If I could just say we would like to maintain the focus really on the essential point, as we judge it, which is moving off of the money flowing on the nose of the children, right on the children's head, and by that process the more children you have so labeled the more money you have.

We think this is counterproductive to the best practice in education. Could I add that with the changes we are suggesting it would still be entirely possible for those States and localities that wanted to categorize to have them and still obtain their money, but it would allow those who have moved past such categorizing to educate their children without having to become, as they see it, somewhat regressive in their procedures.

Mr. RYAN. Could I add that in many of the large cities, the parents are saying, "We shall not have our child categorized." Often there is doubt in their minds as to whether it is the schools or the children who are handicapped. We need language to deal with the realities of these kinds of problems. To give another sample: in my

home school district, some Korean orphans were adopted by several families. The best resource in the school buildings which those children attend, the teacher best able to deal with their serious language learning problems, is the special education teacher. Who is to deny the children access to that program which seems most promising to them? Why should we adopt a system which tends to insert boundaries in programs which work to the disadvantage of children?

Mr. BRADEMAS. I don't think H.R. 70 denies access to the program on the part of those children. It is rather a question of determining, as Dr. Balow was saying, the accounting for purposes of the money flow.

Mr. REYNOLDS. Yes. You could argue that the school district can go ahead and serve the children, but simply do not get Federal money for it. What will happen in this case is that in many cases they will categorize children who do not need to be categorized unless you require it because they get money flow.

Mr. BRADEMAS. I could not disagree with you more. It seems to me that by the language that you have proposed, with respect to those who for any other reason are handicapped, you have opened a huge highway to any local school system superintendent who wants to just add them up and say, "These are troublemakers. They have green eyes and most of the kids in this classroom are blue eyed and the green-eyed kids for that reason are, in our opinion, troublemakers."

Mr. REYNOLDS. I don't think cardiologists become gynecologists on that basis. If you support teachers who are specialists in assisting children who have language difficulties and require that they operate within a framework of carefully set guidelines they will not go completely out of focus, any more than gynecologists tend to become cardiologists. Again I reflect to your 18 years' experience of Minnesotans with a personnel funding unit.

Mr. BRADEMAS. I am not challenging your experience, but I must say, however, nobody else is taking the position you have here and I have not had a groundswell of requests to testify along the lines as yours. I hope I am openminded, but I would have to be persuaded intellectually by the impact of your argument; and I don't think I am likely to be persuaded politically unless I hear a lot more than I have so far heard—but I am perfectly willing to be persuaded intellectually even though I hear little support at the other end of the line.

I hope my questions have made clear—I haven't yet found you responsive, at least to satisfy my thinking, to my questions. I could well see you could turn this into a bill wherein, at least in respect of the revision you here proposed, it would be used to cope with problems where there are racially mixed schools, for example, and you say:

Well, in this particular school system we have a lot of white kids and a few black kids and the black kids are, by reason of race, severely handicapped in their ability to proceed with their schooling under ordinary arrangements. Please send money and we will decide at the State level and you at the Federal level have no business telling us we can't use such a criterion.

Have you thought that through?

Mr. BALOW. If I could make two comments. One is that the States and localities are also putting in money and I think it has been their practice to put in the far larger proportion of money for such programs, so that there is not a great amount of special gain that they accrue.

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The second point is that under the present bill Federal officers would be called upon to police some things we don't think are necessary to police.

I would like to suggest that what we want and need from the Federal Government is programmatic leadership, procedural leadership. If the Federal Government can place its attention on insuring program audits rather than case-by-case audits of individual children, we think their effort would be put to much better use. We do believe that if there are procedural standards and programmatic standards that the Commissioner establishes by the bill for State plans, and those State plans are quite detailed, as appears to be called for in the bill, that the monitoring can be done on a shared basis.

I don't believe that the States are particularly interested in using money for handicapped children just to support education in general. They are concerned as you are about handicapped children, they have their own legislative pressures, they have their own court cases, and of course the professionals and parents themselves are interested as well.

Mr. REYNOLDS. If you had a map and marked it in some way to show where special education programs now exist you would see great unevenness in their distribution.

Mr. BRADEMAs. To do what?

Mr. REYNOLDS. If you mark out on a map where the special programs for children in categories have developed, you will observe that they occur much more frequently in some communities than in others.

Mr. BRADEMAs. I am not being difficult, but I don't understand your point.

Mr. REYNOLDS. Programs for handicapped children tend to develop most frequently in disadvantaged communities, in the ghetto rather than in the suburbs. The proportion of black or Chicano youngsters who could very easily become labeled "mentally retarded" or "emotionally disturbed" is much higher than in the population in general. But the parents of such children are saying: "Do you need to hang those negative labels on our children before you serve them?"

Mr. BRADEMAs. That is a very well taken point, but that is a question of incompetence on the part of whoever is making those judgments. That is not a question of the law. That is because whoever the so-called professionals are back there, whom you have made reference to, they are not being very professional in their assessment of the handicapped, and they have looked at a black child or a Chicano child and said, "He is mentally retarded" when he is not. That is not a function of categorization that might be contained in the proposed bill, but it is a function of the lack of competence professionally on the part of whoever so categorized him, isn't it?

Mr. REYNOLDS. Many youngsters need intensive services of the kinds that special education gives, but the programs do not need to be organized in negative, categorical forms.

Mr. BRADEMAs. That is a different kind.

Mr. REYNOLDS. Your bill would withhold services with Federal support unless the children are categorized.

Mr. BRADEMAs. That is not true. That is a misreading of the bill. Have you ever heard of the bilingual education program?

Mr. REYNOLDS. That is not this program.

Mr. BRADENAS. I understand, but have you heard of it?

Are you going to try to tell me the bilingual education program withholds funds from a physically handicapped child because it does not authorize funds for physically handicapped children?

Mr. REYNOLDS. As I understand it, this money would flow only when a child is in one of the categories.

Mr. BRADENAS. That is correct. I am saying if programs are now in the ghetto, would you remove those programs because the parents don't want the children categorized?

I don't think we are understanding each other, Dr. Reynolds. What I have tried to suggest is that you are misreading the purposes of H.R. 70, if the kind of interpretation you are placing on it is that H.R. 70, because it is aimed at serving the needs of physically and mentally handicapped children, is aimed at withholding money from black children or Chicano children, that is not aimed at meeting, for example, the needs of the bilingual child. But of course a bilingual program is not intended by Congress to serve the needs of mentally retarded children, and I think it is a misreading of what ought, in a commonsense interpretation, to be very clear.

Do you understand my point? To use words like withholding I think is really bringing in words that really confuse the discussion here.

Mr. REYNOLDS. Special education now goes on, as pointed out, disproportionately in different locations in attempts to serve children who need very intensive help. As I understand it, under H.R. 70 money would go to special education programs only in those communities where children are individually categorized in the terms defined in the bill. It would withhold funds from all other special education programs.

Mr. BRADENAS. I didn't say that and you won't find the record saying that. You are misreading what I have been saying. The fact that there may well be a higher incidence of special education moneys going into disadvantaged areas can be explained in a variety of ways. One may well be whoever is making categorization of the handicapped back there may be making errors in judgment.

There may be another explanation and it may well be in a given community you have a higher incidence of physical and mentally handicapped individuals for a variety of reasons. Do you understand my point?

I am just trying to be scientific. I must say I get a little surprised when we get scientists wanting to read in different meanings. I am not trying to dispute, but trying to understand and be sympathetic with your point, but I think you are misreading what the bill is saying.

Mr. BALOW. I don't think we are suggesting the bill states, in words, that there is any intent to withhold money from anybody really.

Mr. BRADENAS. You are correct.

Mr. BALOW. Except so-called normal children, but the money is not intended to go to children who are not handicapped, is that true?

Mr. BRADENAS. That is correct. For example, it is not a bill to provide for bilingual education, to pursue that analogy, and to suggest that we are intending to withhold moneys in the bill from children who may be bilingual, therefore, is, on the surface, a misreading of the purpose of the bill.

Mr. BARLOW. We are not trying to communicate that and obviously we are not getting our point through very well. But if it is true that the child would not support a child who is not handicapped, then in order to be supported, must he not be labeled "handicapped"?

Mr. BRADENAS. I think that is a reasonable conclusion. Physically or mentally handicapped, yes.

Mr. BARLOW. Then to be so labeled under the definitions of the bill without the end "for any other reason" statement, does he not have to fit one of the traditional categories of handicapped as defined?

Mr. BRADENAS. That is fair enough.

Mr. BARLOW. Then I think what we are saying, sir, is that there are many such children who need the kind of service who are, on a functional or behavioral basis, handicapped.

Mr. BRADENAS. Just a minute. Stop and analyze your sentence.

You imported a word you have to be careful about. You said "many such children" and what is the "such"?

Mr. BARLOW. "Such" refers back to the definition.

Mr. BRADENAS. Of physically or mentally handicapped?

Mr. BARLOW. Yes.

Mr. BRADENAS. Now, you say there are many physically or mentally handicapped children who do not —

Mr. BARLOW. Who would not need to be categorized or labeled as a handicapped child were it not for this language.

Mr. BRADENAS. That may be true, too.

Mr. BARLOW. We are suggesting the label is deleterious, is negative and harmful, and I think there is good evidence for it.

Mr. BRADENAS. Now you are moving away from your original line of argument.

Mr. BARLOW. The point is the bill requires, in order for the money to flow, that individual children be labeled.

Mr. BRADENAS. Well, you see, what you are really objecting to, it seems to me — and I am not trying to just cavil with you, but am trying to understand your point — is you don't get apples off an orange tree, to which I say that is quite true. This is not a bill, for example, to provide aid to colleges and universities for the education of psychiatrists and, therefore, to suggest that it withhold money from colleges and universities for the education of psychiatrists is true, but not relevant.

What you are saying is you don't like the definition of "handicapped" in the bill which is "physically or mentally handicapped," and to that I say it is a very fair point you make. You want us to have a different definition, if I understand you?

Mr. BARLOW. Plus. It is not apples and oranges, if I may say, but I believe what you are saying is you don't have to call an apple a rotten apple in order to treat it as an apple.

Mr. BRADENAS. That is your phrase, not mine.

Mr. BARLOW. Yes, but that is the thing essentially, it is the stigma that goes with being labeled.

Mr. BRADENAS. I will yield to Mr. Quie, and I will say I found the colloquy stimulating and I would like to go on somewhat more because I am still not satisfied, in all candor, that I still understand your basic point and I have been trying to.

Mr. Quie?

MR. QUIE. Yes. I have a number of other questions, but I would like to pursue this because I think it is good to stay with the continuity of the point you are raising. I think the main point that Dr. Reynolds and Dr. Balow are raising here is that there is a definition of "handicapped" and they don't propose to remove any of the definitions, but they expand it so that young people who would not want to be or where it would not be desirable to be identified in those categories, they could receive the benefit of the special education because their needs are such.

Then I wanted to go to the point which must be their reasoning. In section 7, any State that desires to receive grants, the Commissioner can approve, and so forth, provides for identification of all handicapped children in the State together with a list of the local educational agencies within the State responsible for the education of each handicapped child, whether such child remains in the area served by the local education agency or is sent out of the area for educational services, and such identification shall include the location in which each child is presently receiving educational services, a description of the services which each child is presently receiving and a statement of whether or not each child is institutionalized and such identification shall be updated, et cetera.

Now by the wording there it implies, it seems to me, that we have to have the name and address of each child. We are not just getting census information on children, but identification of each child before any money will be coming to the State. Is that your understanding, Dr. Reynolds, and I would ask Dr. Balow also if it was his understanding.

MR. REYNOLDS. Yes. It would require a case-by-case list, with reviews by public authority and presumably this list would include all children who could be classified according to one of the categories mentioned in the bill. Personally I believe there is need for gathering data on severely handicapped children, the profoundly handicapped. You came from the section of Minnesota which includes the braille and sight-saving school and the school for the deaf. It is necessary to know as early as possible when a deaf child appears anywhere in our State in order to plan for him. But we do not need, I think, case by case, the name of every child who is in a preventive special education program in Bloomington or elsewhere for reason of a temporary handicap.

I think that children with more transitory kinds of problems need not go to rosters in the categories named in H.R. 70. It would be acceptable to require statistical reports of various kinds in order to satisfy your requirements for accountability rather. But H.R. 70 requires rosters of individual children in some form, since the money flows child by child.

MR. QUIE. I just want to see, if there is agreement, John, that you anticipated there would be a name and address of each child specifically located to see if we are on the same wavelength.

MR. BRADY. I think the interpretation of Mr. Quie is accurate, but I must say, in making this response, I hope that I will indicate to our distinguished witnesses that I am not trying to be difficult just to be difficult, but it is to understand. I don't regard myself as wedded to that and, indeed, I have some reservations as to whether it is a good



thing to have a name-by-name identification program because of some of the reasons you stated.

Mr. QUJE. I must say we have in our booklet a State law that applies, one of the pieces of information that comes in Minnesota, an annual school census must be taken, including an enumeration of all children as required by reports of the commissioner of education. The school census must show the name and date of birth of each person and the name and address of the parent or guardian or other person having control of the child or other necessary data in conducting the census, which is the responsibility of the school district.

It seems to me this implies Minnesota is requiring the same thing that you now say would be unwise federally and we have agreement that that evidently is the meaning of section 7, subsection A-2.

Mr. REYNOLDS. One of the reasons for the distinction between "3 percent and 12 percent" of children—or whatever figure is at the upper end—that we made in our formal statement is that it seems legitimate to seek information on the 3 or 4 percent of children who are severally handicapped in order to make broad regional and State plans for them. But these census procedures do not detect children with learning disabilities or other moderates in transitory learning problems. The census does not identify a very large proportion of our handicapped children.

Mr. QUJE. I recognize with my aid from Minnesota, it is my understanding of the law of Minnesota you don't count the number of children so identified in the census in order to get the money to the school district, while here in this legislation this is what I am trying to point out, that Minnesota requires identity of those who are handicapped and here it seems we need an identity. However, in this legislation you count those who have been identified in order to get the money and in Minnesota we don't count those who are identified to get the money because we base it on the program, the personnel.

Mr. REYNOLDS. In Minnesota, you don't run a bounty hunt, in a sense, for the kids in category and that census has no relationship to the aid pattern of the special education program. If it were improved, it could have an important relationship to planning in behalf of the most severely handicapped children in our State.

Mr. QUJE. I tried to identify, John, what the differences are here.

Mr. BRADEMAS. Yes.

Mr. QUJE. And I recognize, you said there is not a host of people coming in supporting these two gentlemen's ideas. I would say for the gentlemen from Indiana and for myself there have been times in the past that we have not followed the political line. We are both of that nature, and if it can be proven to us logically, with information you can present to us, we are both that type of legislator who would pursue the avenue that would give the children who need the special services the greatest amount of help.

While it may appear that Mr. Brademas has been badgering you, I do want to indicate that logic can prevail with both of us if we have to provide the logic.

Mr. BRADEMAS. I appreciate and share the views of the gentleman from Minnesota and, in fact, I think I am right in saying that in respect of the handicapped set aside in title I, with respect to handicapped children in State-supported institutions, did we not provide that the money has to follow that child wherever he may go?



Mr. QUINN. We have provided now in title I that they can now follow the child where he goes. Like in Minnesota they are starting to educate the institutionalized child in the local educational agency and the money can go to the local education agency, which was not the case before. In fact, in title I what I have been attempting to do, and we have been partially successful, you could say it just the reverse of what you have advocated in the changes to this legislation.

This is limited, H.R. 70, now to those identified as handicapped since it is a definition, and you want to expand it to those you see, for other reasons, severely handicapped in their ability to proceed with schooling under ordinary arrangements or might be anticipated to become severely handicapped except as they are provided.

What title I does is provide compensatory relief for the educationally disadvantaged and severely limiting, I felt, on the handicapped, so what we have done is give more flexibility to title I so there will be more opportunities for the handicapped to secure benefits of title I.

Mr. RYLANDS. I don't think we are really interested in its being expanded, seeing the target enlarged greatly or to unmanageable proportions. Quite the obverse. We are saying that these are great difficulties inherent in a system which attempts to maintain control at the level of a child in-category unit. We urge you to consider maintaining that control by using in personnel unit along with a requirement for programmatic design. We do indeed foresee difficult problems if it becomes necessary to negotiate with some Federal office, child-by-child, according to some set of rules, and I think it would take your administrative leadership to the wrong set of problems.

Mr. QUINN. What you are saying really, as I understand it, as you develop the State plans and local schools will be operating through the State program in the use of their money, they would have to be approved by the Commissioner and you want the Commissioner then to make his determination on programmatic problems rather than coming out and telling you "We don't identify this child as that handicapped, and therefore, we are not going to permit you to have the money."

Mr. RYLANDS. Yes. You can define your target in general terms, but, hopefully you will not require diagnosis of mental retardation for every child and give money only on that basis.

Mr. QUINN. The other part I want to raise is in section 7A-1, it mentions "Including preschool programs," and you are talking about preventive or the opportunity for preventive activities. Do you feel the way it is written that it can only be for a preschool program for those who will be identified and, therefore, you want to give more flexibility so that, to go back to your definition again, those will be anticipated to become severely handicapped if you didn't do it, and is that why you say it is not adequate enough in the early years?

Mr. RYLANDS. Yes. Very often special educators can work in teams with nursery school teachers, preschool teachers, and primary teachers in very early stages of a child's development to help those who we beginning to show problems but who should not be labeled "handicapped." Such programs can help to reduce the incidence of serious problems at later stages.

As I read the bill, if you are not willing to categorize a child as handicapped in one of the traditional categories or in an aggregate of

such categories, there would be no money, provided under H.R. 70. This would operate to the disadvantage of early, preventively oriented programs. Special educators are interested, I believe, in giving very high priority to early education programs in order to prevent long periods of failure and later severe handicaps on the part of children.

Mr. QUIN. You want to make certain this legislation is flexible enough to permit that preventive activity.

Now getting into another basic part of your testimony, that is, the suggestion that we fund programs, or really the professional personnel, rather than per student.

You have observed special education programs operating in various States, some who do assist in the way that this legislation proposes, where there is a head count and they receive the money based on head count, and of course in Minnesota, the mechanisms that we have, can you tell us your observation on how those two systems are operating in their ability to reach the handicapped child in the best way?

Mr. REYNOLDS. Yes.

Mr. QUIN. You are saying the Minnesota method is better and can you tell us why it is better and the other ones are not working as well?

Mr. REYNOLDS. I think, Congressman Quin, the way the money flows has a tremendous influence on the shape of the program.

Mr. QUIN. Before you go any further, I might say in Minnesota before we changed the law in 1957, we did distribute it on the basis of this legislation I stated, as I recall, and then moved to the new method.

Mr. REYNOLDS. In Minnesota since 1957 there have been a great number of needed corrections in the program. Before that time some children were categorized and placed in programs in ways that did not always serve their best interests.

When I attend meetings of administrators of special education in Minnesota, I find them talking about the real problems of children and moving into a programmatic framework. That is not often true in other places where children-in-categories are the basic funding unit.

I am quite sure that I do not have that overall, encompassing vision required to answer your question with precision. I think Minnesota has done very well, much better than average among the States. We can present to you ideas and experience which provide one possible solution to this problem of "How are we going to get money flow without stigmatizing children and families."

Mr. QUIN. Did you want to say something?

Mr. BALOW. Could I just refer to pages 6 and 7 of our printed testimony, where there are four real illustrations of experience. The two on page 6 do show, in a logical way, I think, the differences that occur under the two kinds of systems of support. I think the two on page 7 do also.

Mr. QUIN. Are these quotes?

Mr. BALOW. These are little vignettes that are real cases that are in our experience.

Mr. REYNOLDS. They come out of our experience. I used them in a statement before Senator Mondale when he was in St. Paul conducting

hearings on S. 6, but they are only quotations from my earlier statement.

Mr. QUIE. I see. Has there been any research or studies along this line that you could point to?

Mr. REYNOLDS. You mean evaluating different methods?

Mr. QUIE. New approaches, yes.

Mr. REYNOLDS. Funding?

Mr. QUIE. Yes.

Mr. REYNOLDS. I don't believe so.

Mr. BALOW. The only thing is the ongoing evaluation. Texas plan (A), called "Project Prime." The entire State has moved to a more open system of attempting to support and deal with their program. The essential professional personnel model, which Minnesota has used, as you know, for 17 to 20 years, Texas has now had 2 or 3 years of experience with, and is conducting a very large evaluation study of it. I cannot quote you the results from that study. They are not all in by any means, but they are coming in, and the Bureau of Education for the Handicapped has perhaps the most up-to-date data on the comparative results to the extent that such results are in.

Mr. QUIE. Mr. Chairman, could I ask the staff to see if they could secure some of that?

Mr. BRADENAS. Yes.

Mr. QUIE. I guess this is the last question I would have. Throughout the testimony we have talked of handicapped children and we once spoke of exceptional children and included the gifted as well. What happened to that whole effort to speak of handicapped as exceptional and include the gifted as a group that would also be assisted by the program?

Mr. REYNOLDS. I would strongly favor the addition, gifted and talented youngsters to the bill, expanding the notion of exceptionality to include them. It seems to me something of a tragedy that we have large numbers of specialists now working with regular classroom teachers to help them plan for children who are handicapped but who are not prepared and supported for work in behalf of the gifted.

Mr. LaVoe and several other legislative staff members participated in the convention of CEC last year, and among other things reported on the bill which Mr. Javits on the Senate side, has introduced on behalf of the gifted. My interpretation of what I heard was there was but very little force behind that bill. I think you would do a great service, if you introduce it into this kind of bill a broader concept of exceptionality and gave to us a possibility of employing and supporting people who would serve the gifted, those youngsters who learn very rapidly in very complex subjects, and who are very often left out and in some ways a very handicapped group.

Mr. QUIE. Do you feel that way?

Mr. BALOW. Yes.

Mr. QUIE. Because many of the gifted children run into severe emotional difficulty, and if you had the flexibility of seeing that occurring earlier and providing a service which is very inexpensive, compared with the severely handicapped, and, of course, providing that assistance.

Well, thank you both for coming here and giving us another point of view to look at as we consider this legislation.

Mr. BRADEMAS. Gentlemen. I would like to thank you as well. As I tried to summarize, at least for my own mind, what you are saying, you have left us with a problem that is, on the one hand, scientific or intellectual, if you will; namely, what is the appropriate definition of "handicapped." And, second, we have a policy problem that is, of course, related to the first question.

I think the language in the last sentence on page 6 of your prepared testimony relates directly to the linkage between these two issues. When you use language that says, "The bill would discriminate among children needing special help," I suppose one could agree that that is true. As I indicated it is not a bilingual bill, and not a title I type bill, and not a bill that assumes a high correlation between economic deprivation and educational deprivation, so I would agree to that extent it discriminates—and I use the word "discriminate" not in a moral sense but scientific sense.

But I do not agree at all with the use of the word "against." It is not a bill against any children, any more than is title I, because title I is aimed at helping improve the learning of children in areas where there are large concentrations of poor families, and isn't for that reason against rich children. To claim this bill is "against" types of children, I think, would not be a scientific statement. It may be a rhetorical one, but those are permitted in this kind of forum, too.

So, to reiterate, I am very grateful to you, and to Mr. Quie for having drawn to the attention of the Chair your own interests and expertise in this field, and I shall study with great care your proposed revision, and hope to be in consultation with Mr. Quie and, again, I hope with you with further questions.

Thank you very much indeed.

Mr. BALOW. Mr. Chairman, we did bring several documents we would like to leave with the committee staff.

Mr. BRADEMAS. Thank you very much indeed.

The subcommittee is adjourned.

[Whereupon, at 12:15 p.m., the subcommittee adjourned.]

## APPENDIX

### TESTIMONY OF HON. CHARLES A. VANIK A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Mr. Chairman, I appreciate very much the opportunity to submit my testimony on H.R. 70 to your distinguished Select Committee on Education.

H.R. 70 attempts to correct what has been allowed to become an ingrained flaw in American society—the less than equal treatment of those with physical or mental handicaps. Despite a governmental system that pretends to treat all persons equally, the figures and statistics in the testimony of the witnesses before this committee have shown that to be untrue.

H.R. 70 attempts to correct at least one aspect of this unequal treatment by increasing the amount of monies spent by states, so handicapped children can have improved educational services.

Any measure, Mr. Chairman, that can serve to deliver equal rights to the handicapped is a welcome one, whether it is H.R. 70 or other legislation in addition to it. There are too many handicapped children now going unserved for us to worry exactly how we accomplish such a result, only that it indeed be accomplished.

In this respect, Mr. Chairman, we might look to the Vocational Rehabilitation Act of 1973 for help in our effort to equalize services to the handicapped. Despite the Administration's deliberate attempts to stall, confuse, delay, and veto that legislation, the Congress made it very clear that it had no intention of allowing the Vocational Rehabilitation Act to be scuttled.

Signed into law on September 26th, that Act contains a provision of great interest and importance to us in our consideration of ways to accomplish equal educational opportunities for all children. Section 504 of the Act, now Public Law 93-112, says:

"No otherwise qualified individual \* \* \* shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

The mandate of this section is quite clear and simple: the handicapped are due all the opportunities of American society, just as are their non-handicapped peers. This obviously includes the right to equal educational opportunities.

Although there have been several court cases involving the handicapped and their right to public education, there has so far been no clear cut decision. Both the Pennsylvania case and the District of Columbia case have resulted in an expansion of the rights of the handicapped, but only as a result of consent decrees, with little legal precedent established as a guideline for future court cases.

Section 504 of P.L. 93-112, however, makes clear that an absolute right of the handicapped exists for equal treatment under Federally assisted programs. In this respect, it is similar to Title VI of the 1964 Civil Rights Act, which prohibits discrimination on the basis of race, color, or national origin in Federally assisted programs.

Section 504 of the Vocational Rehabilitation Act is, essentially, a Civil Rights Act for the Handicapped. There is no reason that the handicapped should be unintentionally excluded from statutory equal right protection already afforded other minorities, and Section 504 recognizes that principle.

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Mr. Chairman, I hope that you and your Committee are successful in your efforts toward providing additional Federal funds for State expenditures for the handicapped. I believe that the Courts will soon require the equal treatment of the handicapped. The result will be new financial demands on many school systems. I hope that the legislation you are developing will help the States and local school districts meet that demand.

CONGRESS OF THE UNITED STATES,  
HOUSE OF REPRESENTATIVES,  
Washington, D.C., May 19, 1974

Representative JOHN BRADYMAS,

*Chairman, Select Subcommittee on Education, Rayburn House Office Building, Washington, D.C.*

DEAR MR. CHAIRMAN: There are seven million handicapped pre-school and school age children in the United States. These children are physically handicapped, mildly or severely retarded, or are suffering from severe emotional disturbances. Over the past few years, it has become increasingly apparent that the educational services available to this neglected minority of our nation's children are grossly inadequate. Only 40% of these seven million children receive the benefits of special education classes, leaving over four million anxious children without access to educational programs that are tailored to meet their special physical or mental needs. About 43% of the total number of handicapped children are in school, but they receive no special training. Seventeen percent, or 1,190,000 children, are receiving no schooling whatsoever. The U. S. Office of Education has determined that none of the one million handicapped children of pre-school age are receiving the special attention that they need and deserve. Only 18 States serve the educational needs of more than 50% of their handicapped, and only four states, Florida, Indiana, Utah, and Washington, provide services for over 60% of their handicapped children. Millions of these children have been assigned to ordinary classrooms unsuited to their special needs, and face the frustration of competing with normal students. The 1,190,000 children who receive no education or training are doomed to the despair of never finding a functional niche in society.

Although most state constitutions guarantee the right to education for every child, all states (with the exception of Mississippi which has no compulsory education law) authorize school authorities by statutes to exclude certain children from public schools. These exclusion laws were originally intended to allow parents of handicapped children who preferred to keep their children home to do so. The laws have been frequently used, however, to keep handicapped children out of the public school system entirely. Protests against this practice of exclusion have been rare due to the social stigma attached to the handicapped child. Recently, however, public sentiment has been aroused and there have been court decisions which assert the right of every child regardless of handicap which impair the normal learning process to a free education in the public school system. According to the Council for Exceptional Children, of the 42 suits undertaken on this issue in 27 states, the vast majority of the decisions have endorsed the right of the handicapped to equal educational opportunities. The trend in these cases, most notably in Pennsylvania (Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania, September, 1971) and in the District of Columbia (Mills v. the Board of Education in the District of Columbia) was to order the state to educate all handicapped children at state expense, notwithstanding the additional cost. Although the Pennsylvania case was limited to retarded children, the District of Columbia case extended the precedent to include both mentally and physically handicapped children.

The trend toward assuming public responsibility for education of the handicapped is increasingly evident in public sentiment, in state legislatures, and in the courts. As we all know, special education, particularly that required by the most severely handicapped children, is expensive. According to H.E.W.'s Bureau for Education of the Handicapped, the average annual cost of educating a handicapped child is \$2,311, while that of a non-handicapped child is only \$926. A 1970 Office of Education report shows that the average cost of educating a child with a physical handicap is 3.69 times that what it costs to educate a normal child. Ewald B. Nyquist, Commissioner of Education in New York State, has estimated that the average cost of educating a youngster in New York State is \$1,700, but the cost for a handicapped child is anywhere from two to five times that amount, depending on the child's special needs. A study done by the Bureau for Education of the Handicapped of five states which have exemplary programs for the handicapped estimated that a minimum of \$3 billion should be added to existing school budgets to provide adequate services for the handicapped. Representatives of the National Governor's Conference reacted to this study by stating that they cannot afford to provide that level of special educational services, even though it is urgently needed.

More help is needed from the federal government. Current federal programs, such as those funded by the Education of the Handicapped provisions of the Elementary and Secondary Education Act are noteworthy points of departure for further aid to the states to insure their ability to provide necessary educational services to the handicapped of each state. In one recent year, according to New York's Commissioner Nyquist, New York State spent approximately \$420 million to provide education services to a quarter of a million handicapped children.

"Despite the millions of dollars provided by the State," the Commissioner has said, "we are still unable to meet the increasing demands being placed on the educational system by the needs of handicapped children."

More federal money is needed to support already existing state efforts to provide free and proper education to handicapped children. H.R. 70, a bill to provide financial assistance for improved educational services for handicapped children, is a welcome proposal for all who are concerned about meaningful education of the handicapped. The bill would authorize a federal payment of 75% of the "excess costs" (as defined in the legislation) involved in educating a handicapped child as opposed to educating a non-handicapped child. That excess cost will be substantial, but it is a vital investment in our educational system and in the futures of the seven million deaf, blind, retarded, speech impaired, motor impaired, emotionally disturbed or other health impaired children in this country who are in desperate need of special educational programs. How much more would it ultimately cost to provide the estimated \$250,000 total expense of completely supporting a dependent person in an institution for his lifetime for each of the seven million who do not receive the proper educational training?

Every child is entitled to receive relevant instruction and it is the duty of society to provide appropriate educational facilities for him to exercise that right. The heavy costs of special education cannot be met by the states alone. H.R. 70 would allow the federal government to provide the funds that each state needs to serve the special needs of all of its handicapped students. Our society has certainly developed the techniques that would be successful in educating and in training handicapped children to enable them to be useful and productive citizens. Surely it is time to allow these children to benefit from those specialized programs. I urge the Subcommittee to take prompt and favorable action on H.R. 70.

Sincerely,

JONATHAN BINGHAM, M.C.

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COUNCIL FOR EXCEPTIONAL CHILDREN,  
Reston, Va., April 1, 1974

HON. JOHN BRADENAS,  
Chairman, Select Education Subcommittee,  
U. S. House of Representatives, Washington, D. C.

DEAR MR. CHAIRMAN: On behalf of the Council for Exceptional Children I would like to submit for the written record of recent hearings on H. R. 70 the statement of the Council relative to the "Education of Handicapped Children Act," of which you are chief sponsor. This statement reflects the wholehearted endorsement of H. R. 70 by the Council's Executive Committee and Governmental Relations Committee, and also contains recommendations for further improvement of this excellent legislative initiative, recommendations which we consider crucial in making H. R. 70 the best possible statutory mechanism.

Permit me also to take this opportunity to commend you for the excellent round of hearings just completed under your leadership. Indeed, your position as one of the nation's foremost advocates on behalf of exceptional children is more fully established by the day, and we wish to express again our deepest appreciation for your efforts. Let me say, finally, that all the resources of the Council for Exceptional Children remain at your disposal as you continue your work on behalf of the "vulnerable" in our society.

Sincerely,

WILLIAM C. GIER, *Executive Director*

#### STATEMENT OF THE COUNCIL FOR EXCEPTIONAL CHILDREN

The Council for Exceptional Children endorses the basic purposes of H. R. 70 to establish a federal role in assuring every handicapped child a free public education and sharing with states and local communities the cost of such education.

The present period of history for the handicapped has been characterized as a movement from charity to rights. For years some handicapped children received an education not because it was their right to receive such an education, but because of the purported generosity of local or state officials. However, that generosity could be expanded, curtailed or eliminated depending on the fiscal exigencies of the education system. Thus, handicapped children have always been highly vulnerable in the education system resulting in 15% of our nation's handicapped children sitting at home or in institutions with no educational opportunity at all, and 50% having no opportunity for the special educational services they need.

Since 1970 a new era of rights has come into existence. The courts have increasingly held that handicapped children have a right to a free appropriate public education. While many states had mandated such education none had enforced it. Now the issue is no longer should we educate handicapped children. The question is how should we do it and where will we get the resources to assure it happening appropriately? Litigation to assure education for all handicapped children is underway in over half of the states and over 1/2 of the Governors have identified education of the handicapped as their number one education priority and state legislators are rewriting the laws of the states.

With all this activity occurring why then is a new federal role such as the one proposed by H. R. 70 required? First, the federal government has an obligation through its enforcement machinery to ensure that states comply with constitutional guarantees. The courts have held that handicapped children have a constitutional right to an education thus, as it has with other civil rights issues, the federal government should now move to ensure the speediest state and local compliance.

Second, the federal government through its resources can fiscally assist state and local communities to carry out this mandate. There is no question that the funds available for public education at the state and local level have become increasingly tight. To provide the additional funds needed for the education of all handicapped children will result in one of the following occurring: the generation of new state and local revenue from tax sources or the transfer of funds



from general to special education, thus reducing general education programs. Both of these approaches, while providing an infusion of new funds to handicapped children also have their drawbacks. First, because funds for education of handicapped children are presently inextricably bound in general education funding, additional state and local revenues will be determined by the level of public confidence in education, not necessarily by public willingness to support education of the handicapped. Second, the shifting of funds from general to special education will hurt some children for the benefit of others. In the long run this does not benefit any child. If the federal government is to play a larger fiscal role in supporting public education then it is our belief that such funds should be directed at those children who are most vulnerable in the present educational system. At this time it is our belief the handicapped children meet that criterion.

Finally, the federal government can bring the leadership and technical assistance to states and communities that is necessary to assure that appropriate education for all handicapped children is achieved in the most expeditious manner. While we believe in the uniquenesses of states and communities, there is a vast history and knowledge about education of handicapped children that should be brought to bear on the movement to educate these children. Now is not the time to reinvent the wheel.

We believe that H.R. 70 addresses itself to these three issues and thus we enthusiastically endorse it and urge its passage.

There are a number of amendments that we would like to propose that we feel would enhance H.R. 70.

**Mandation**—We would recommend that H.R. 70 contain strong and clear language requiring the states to provide full and appropriate special education and related services to all their handicapped children within a fixed time-frame determined by the Congress.

**Labeling of Children**—It is certainly our hope that the day will come when it is possible to provide services to children without setting those individuals apart from others. We realize, however, that labels are necessary if we want assurance that target populations receive the special resources allocated. However, there should be no need to label children with labels that are relevant to the resource allocation nor should there be need to label them for purposes other than resource allocation.

Therefore, we believe that the definition of handicapped children in H.R. 70 is sufficient and appropriate for the following reasons. First, it limits the benefits of the Bill to those children having disabilities and requiring special education and related services. Thus, a child in a wheel chair who requires no special education or relevant services is not handicapped for the purposes of the bill. Second, the discreet disability labels of mentally retarded, deaf, etc. establish the parameters of the term handicapped, but no requirement is made that any child for accounting, educational, or any other purposes be so labeled. We would oppose any such requirement.

There are some who would propose that the definition be expanded to include all children with learning problems. While ideally we cannot fault that goal, we do not feel it practicable under today's circumstances. As we have noted, handicapped children are a highly vulnerable and identifiable population and desperately need federal attention. What they are requesting is no different than what the federal government is doing to other groups of children having special learning needs, such as in Title I of ESEA, the Bilingual Education Act, and the Juvenile Delinquency Act.

We propose that section 8 (a)(8) be amended by eliminating the necessity for the Commissioner to gather information on the identification of all handicapped children in the state. We realize that this provision relates to the information requirements of section 7 (a)(2) which we endorse, but the provisions of 7 (a)(8) could be construed to authorize or require a national register of all handicapped children. This we oppose. Thus, we believe that for the purposes of section 7 (a)(8) that the Commission be limited to collecting only necessary statistical information.

We further recommend that any data collection systems required to meet the purposes of this bill be required by statute to safeguard the confidentiality of

such data and the rights of handicapped children and their families. We suggest that the report of the Secretary's Advisory Committee on Automated Personal Data Systems might be helpful in your consideration of this matter.

While the Report's recommendations are quite detailed they are based upon five (5) important principles:

1. There must be no personal-data recordkeeping systems whose very existence is secret.
2. There must be a way for an individual to find out what information about himself (or herself) is in a record and how it is used.
3. There must be a way for an individual to prevent information about himself that was obtained for one purpose from being used or made available for other purposes without his consent.
4. There must be a way for an individual to correct or amend a record of identifiable information about himself.
5. Any organization creating, maintaining, using, or disseminating records of identifiable personal data must assure the reliability of the data for their intended uses and must take precautions to prevent their misuse.

*See Eligibility.*—We would recommend that the current provision of services under the Bill to handicapped children aged three to twenty-one be changed to handicapped children "from birth to twenty-one." There is no question that it is imperative that special education and related services be delivered to handicapped children, particularly those with severe handicaps, at the earliest age possible. For example, for some deaf children, the loss of several years of auditory training often produces irreparable damage to their speech development. Failure to receive mobility training at an early age for a blind child may result in substantial experiential deprivation which makes learning in the later years very difficult. For some handicapped children intervention might not be appropriate until the age of three or five, but we see no way of setting limits by traditional categories of handicaps or by service categories. Thus, services should be available from birth to twenty-one, with the assumption that due process provisions will be the constraining device to assure that the services are in fact needed.

*Definition of Special Education and Related Services.*—We recommend a definition in the Bill of those special education and related services which are legitimate items for reimbursement under the Act. We make this recommendation in order to set parameters at both ends: to assure that all legitimate services are in fact reimbursable and to assure that reimbursable services do not go beyond the scope of the educational mission.

More specifically, the primary purpose of special education instruction, meaning services that are educational in nature and that promote learning. At the same time, it is realized that many handicapped children require related services such as transportation and developmental, corrective and supportive services which will make it possible for them to benefit or respond to an educational program. Thus, physical therapy would only be an approved cost program if it was linked as an imperative to achieving an instructional objective, which might be, for example, learning to walk or learning to hold a pencil.

*Least Restrictive Placement.*—We believe that the Bill should require that handicapped children to the maximum extent appropriate be educated with children who are not handicapped and that special classes, separate schooling or other removal of handicapped children from regular educational placements occurs only when the nature or severity of the child's educational problems is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

In many instances, placement decisions are now made on the basis on what a community has available for the child rather than what the child needs. What the amendment would do is provide that children could not be placed in institutions if what they need are community based special schools. That children could not be placed in special schools if what they need are special classes in regular schools. That children could not be placed in special classes if they can be integrated into regular classes. The emphasis in all placement must be on a setting as close to the norm as possible depending upon the needs of the child. Increasingly, courts are sustaining this concept.

*Testing and Evaluation.*—We propose that section 7(a)(7) be amended to provide assurance that testing and evaluation procedures utilized for the purposes of classification and placement of handicapped children are selected and administered so as not to be racially or culturally discriminatory.

*Administration*—We believe that the Bill should require that in each state education agency there be an administrative unit headed by a director qualified by education, training and experience to take responsibility for and give direction to the programs and services for handicapped children required by the Bill. Further, that the unit be adequately staffed and that its director report directly to the chief state school officer.

We also recommend that the Bill require that programs and services for education of handicapped children at the local level be administered, supervised, and provided by individuals qualified by education, training and experience to assure the adequacy and appropriateness of such programs and services.

STATEMENT BY RUTH E. LOYSTER, CHAIRPERSON, EDUCATION AND RESEARCH COMMITTEE, NATIONAL ASSOCIATION OF THE PHYSICALLY HANDICAPPED, INC.

*Mr. Chairman and Members of the Select Subcommittee:*

Having very recently received a copy of H.R. 70 and having been asked to comment on it, I present my views from the standpoint of a cerebral palsied adult who a generation ago attended elementary school in a classroom for the orthopedically handicapped followed by attendance at a regular public high school. After college and volunteer work with the National Association of the Physically Handicapped, my observations and experiences concerning education of the physically handicapped, especially the cerebral palsied (C.P.), disturb me.

The authors of H.R. 70 are to be commended for recognizing the great need for special education services to handicapped children. We understand that H.R. 70 proposes to assist States to provide and improve their educational programs to handicapped children by offering financial support. In so doing, we note certain requirements from the States and certain assumptions made. Whereas, there are a number of fine provisions in the Bill, which we wish to mention shortly, we first call your attention to what we consider dangerous trends. Like the States which are adopting mandatory school laws for handicapped children, we fear that unless the language in Section 2 of the Bill can be reworded, its provisions could tend to further segregation of and discrimination against the child with a severe physical disability. The C.P., for example, has a double problem. In addition to having to overcome his physical limitations, he too often must prove his mental abilities.

In our opinion some assumptions expressed in Section 2 of H.R. 70 may give the wrong impressions. What is meant by "special education needs" of handicapped children? Does it mean, as we believe is implied, that a handicapped child does not require the same educational opportunities and development as the so-called normal child? Or does it mean, as we would be willing to accept, that physically handicapped children require special assistance to acquire the same knowledge and school work as the non-handicapped? Why could the word, "special", not be deleted from the Bill?

What is wrong with handicapped children participating in regular educational programs (p. 2, line 4)? Should the emphasis not be to give assistance to as many handicapped children as possible to remain in the regular classroom?

The mention of remedial, testing, and evaluation procedures (p. 2, line 9 and p. 12, line 1) brings up a delicate subject as it affects the child with a severe physical disability. There is a wealth of documented evidence showing the injustices and unfairness of IQ and various mental tests. (Among our recent readings on testing is the rather amusing article<sup>1</sup> about a Canadian psychologist who scored 77 on an IQ test.) For the physically handicapped child with a communication problem these testing devices and methods are worse. Although some protection against over testing may be provided in the Bill (p. 12, line 1), we do not like to see funding for such purposes. Rather funding should go for improving teaching methods and equipment.

The "purpose of this Act" needs clarification. We resent the implication that education during childhood should be based on individual needs. Should every child not learn to read, for example? At what point how is a handicapped child going to "participate meaningfully in family, community, and national affairs" if he does not have equal opportunities along with the normal child? Here we wish to insert a proposal which could help to insure not only an equal but an integrated education. From the Bill we gather that Federal funds would be available only

<sup>1</sup> Charlotte Robinson, "A Better Method of Testing Brain Power?" Detroit *Free Press*, May 24, 1974.

for separate and special classes and programs for handicapped children. It has been pointed out that in Michigan more funds per pupil are provided for the handicapped child in special education classes, but, if he goes into a regular classroom, the per pupil amount becomes the same as allowed for a normal child. This often keeps the handicapped child out of the regular schoolroom. If the school district received the amount allowed for a handicapped child in a special class, school districts would be more willing to make provisions for handicapped children in the regular schools. We do not mean to imply that every handicapped child is going through school in the regular school. But we learn of situations where special education programs are integrated into regular school programs. Examples: In Cedar Rapids, Iowa, we read that it is considered important that handicapped children attend classes whenever possible with non-handicapped children, and they also share the library and cafeteria.<sup>2</sup> At one time at least we know that in Jackson, Michigan, blind children attended regular classes with the non-handicapped and only went to a separate study hall where special facilities were available and special teachers assisted them with their studies. It is these types of programs which should be encouraged. We urge that provisions for such education programs be included in H.R. 70.

Regarding definitions (p. 3-16), what happens to the child who has more than one handicap—blind and crippled, for example? We believe "handicapped children" should include provisions for the multihandicapped.

Three provisions of H.R. 70 are of major importance and provide redeeming features. Recognition of the need for a change in attitude and perhaps a different approach for educating misperceived children (p. 10-117, p. 15-117, and p. 16-11) is long overdue, as indicated earlier in this statement we wish that similar provisions would be included in H.R. 70 to promote the education rights of handicapped children wrongly kept in back bedrooms or in the wrong special education programs. The provision for a State Advisory Committee on Education of All Handicapped Children is excellent; we consider this the best feature in the Bill. Although it may cause some incorrect labeling, the provision for identifying all handicapped children (p. 10-13) would seem necessary in order to provide education to all.

We also commend H.R. 70 as a means for equalizing education opportunities among the States for handicapped children. Additional provisions we consider valuable include procedures for classification of a handicapped child (p. 11-18) and the provision for reallocation of funds (p. 8-17).

Although we question the limitations on two provisions in H.R. 70, we favor them as a beginning. Providing funds only to public agencies may hurt some good programs provided by private agencies; we are thinking of the Human Resources School in New York promoted by Henry Viscardi, Jr. While equal education programs should be provided throughout a State for all its handicapped children (p. 15-11) we feel that wherever possible education should be equal and integrated with education provided for the non-handicapped child.

In summary, H.R. 70 recognizes the need to expand and improve educational opportunities for handicapped children and that the Federal government has an important responsibility to meet those needs. The Bill seems to promote the idea that education is a fundamental interest, which to our amazement the Supreme Court appears to have denied in one case.<sup>3</sup> However, to actually meet the educational needs of the physically handicapped child his mental development comes first regardless of his physical development. Improving teaching methods and providing adaptive equipment should have precedence over time and money spent for testing and evaluating children. To provide a meaningful education opportunity for the physically handicapped child we repeat that educational programs should not only be equal but wherever possible be integrated with education of the non-handicapped and certain terms used in H.R. 70 should either be deleted or clarified.

The American Occupational Therapy Association, representing some 16,000 registered occupational therapists and assistants, wishes to record its support in principle for H.R. 70, the Education for the Handicapped Children Act. This legislation would assist the States in meeting the excess costs of educating handicapped children.

<sup>2</sup> Bob Rozel, "Cedar Rapids, Iowa Shows Improved Handicapped Education, Recreation", *National Hookup*, Dec., 1971.

<sup>3</sup> Ann Gallas and Keith M. Sisman, "Abandon in the Land: Legal Strategies to Effectuate the Rights of the Physically Disabled", *The Georgetown Law Journal*, (July, 1973) p. 1505.

We shall not elaborate on the size of the problem, the years of neglect experienced by these citizens, nor the financial difficulties confronting the states as they attempt to implement the court-ordered recognition that all handicapped children have a right to an education in an appropriate environment.

However, we should like to comment on two features of this bill. First, we applaud the proposed age categories, but we wish to suggest that you consider extending coverage from birth to age 21. If this is not appropriate for an education measure, we suggest that state plans identify those resources and programs which may include the period of birth to age 3, the age cited in H.R. 70. The identification of these children can and should begin at birth and continue throughout infancy as well as during preschool and school age. Hospitals and clinics, pediatrician's offices, day care centers, home visits by public health nurses—all are settings in which these children may be identified. Early identification of these youngsters will pay substantial dividends for them, their families and society. For the mentally retarded child, the capacity for self-education is extremely limited or nonexistent. An early start is the most effective compensation for this limitation of individual capacity.

Others testifying before the Select Subcommittee on Education during hearings on H.R. 70 pointed out that state plans for the education of the handicapped must recognize that services should not be restricted to special education, nor only teaching personnel and support staff involved.

For example, officials of the National Association of State Directors of Special Education have said, "We are critically aware of the comprehensive supportive service effort needed . . . we recommend that you define these supportive services in the Definitions section and subsequently allow the states to include them in their excess costs computations." As health professionals with many years of experience in serving both physically and mentally handicapped children, we concur with this recommendation.

The state of Colorado has already taken a step in the right direction by listing eight categories of personnel in addition to teachers, supervisors and support staff in their Handicapped Children's Education Act. Included are audiologists, mobility specialists for the blind, nurses, occupational therapists, physical therapists, psychologists, social workers and speech correctionists.

It has been said, "If you treat a child as he is, he will stay as he is. If you treat a child as he should be, he will become what he should be." The occupational therapist assists in evaluating the mentally and physically handicapped child and helps to provide the will, the means, and the training for that child to achieve his or her highest level of function.

In more specific terms, qualified occupational therapists and assistants teach self-care skills (feeding, washing, dressing, toileting) and help the child to become more independent by learning such basic social skills as how to follow instructions, complete tasks, control behavior and strengthen their self-concept. Experience shows that perception, functional abilities and self-concept all improve at the same time.

Helping children learn how to balance and control those muscles necessary for coordinating arm, hand and finger movement is another way in which occupational therapists contribute to further growth and development. Games involving gross and fine motor activities, sensory training crafts, and vocational skills appropriate for the child's development level provide opportunities for success experience in a peer group.

The ultimate goal of education for the handicapped is to assist the child in becoming as self-sufficient as his handicap permits. The expertise and assistance of a variety of personnel must be used in achieving this end and should be recognized in any national legislation directed towards this purpose.

HONOLULU, HAWAII, April 11, 1974.

Re House Resolution No. 70; Senate Bill No. 6.

CARL D. PERKINS,

*U. S. Congressman,*

*House Office Building, Washington, D. C.*

DEAR MR. PERKINS: I am a past president of the Council for Exceptional Children, the author of one of the two most popular introductory texts to special education, and an affiliate professor of special education at the University of Hawaii. However, I am writing this letter as a private citizen, as a long-time advocate

of children with disabilities, and as one who is retired and no longer has to make a living off such youngsters. My request is that you take whatever action is needed either to have the above-mentioned bills extensively overhauled, or better still, tabled. In their present form, it is my honest belief, as a long-time scholar in the field and a former U.S. Office of Education staff member, that these bills, if enacted, would do more harm than good for the very children that we are committed to serve better. Here are my main concerns:

1. This legislation perpetuates the placement of *traditional disability labels* on children who already have enough problems. These labels, especially for the mildly handicapped, have little or no educational relevance and are clearly not badges of distinction. They should only be used if there is substantial evidence the child will benefit from having one of them affixed to him. (We frequently hear personnel in state and local school systems say they must continue to use them to qualify for federal funds. Thus retaining them in this proposed legislation shows a lack of federal government leadership.)

2. We have very little evidence that much of our special education for the mildly handicapped (who will make up perhaps as much as 85 percent of the exceptional children covered under this legislation) is *effective*. This is especially true in the areas of the mildly retarded, speech impaired, crippled, special health cases and the visually limited. Until we have good evidence on what types of special education are *superior* to regular education for what types of children, we should not use the taxpayer's money to provide generous grants-in-aid to support the proliferation of such services.

3. This legislation does not move us toward the *normalization and integration* of services for children with learning problems, but will have the reverse impact. Not only general and special educators have roles to play in serving these children, but remedial educators, school psychologists and other therapists do as well. In reading this legislation, and after having consulted over the years with many State Departments of Education in this country, I can assure you that you will be building special education domains at the expense of many other professionals equally competent and ready to serve children with school problems.

4. The effects of this legislation will be to *discriminate* frequently *against* children who belong to *minority groups*, are *disadvantaged* and/or are *males*. It could be used to support many programs that run counter to a number of recent court decisions. Much of special education for the mildly handicapped has been to provide relief for the regular classroom teacher and jobs for the special educator at the expense of the disenfranchised child who is non-white, poor, or male—the ones who cause the most trouble in traditional classrooms.

5. This legislation squanders the U.S. citizens' Federal tax dollars on services of dubious value with only modest control mechanisms over the States who will disburse the funds. *Basic education is the responsibility of the states*. You will be contributing to their delinquency by paying their bills for them.

Many other cogent arguments against this legislation have been made. For example, Drs. Maynard Reynolds and Bruce Balow of the University of Minnesota have submitted extensive testimony to your committee on a number of them. However, if there are other aspects of these bills on which you would like my reactions, do not hesitate to call on me.

From the above, I believe you can see why I have recommended to you that these backward-looking bills be tabled. They do not warrant salvaging. Instead, I would strongly urge you to support more research and development projects (*efficacy studies*) for the next five to 10 years that will provide us with a body of knowledge on which to base our practices and therefore our legislation. As I said earlier, we need to find out what educational services work best for what type of child. Another need is generous support of services for the very small percentage of *severely handicapped children*. These children do not fit into the educational mainstream and demand special help now. We cannot do enough for such boys and girls. (A good feature buried in this legislation is the support for a look at institutionalized children.) Too, there is a need to underwrite more projects aimed at the *prevention of learning disorders*. More funding in these three areas would place the federal government in a leadership role rather than a reactionary one.

I shall send copies of this letter to such current national leaders in the field of special education as Dr. Jack Dinger, CEC President, in hopes they will drop their support of this legislation in its present form. However, you must recognize they are in difficult positions with split loyalties between being advocates of exceptional children and being lobbyists for vested-interested groups that are

interested in extending their own empires. You also need to evaluate carefully testimony from parents of the handicapped. In essentially all cases, they will represent the seriously disabled, yet as much as 85 percent of your funds may go to the children of non-vocal parents who do not consider their youngsters handicapped and do not want them labeled and stigmatized as such.

I would ask that you share this letter with the members of the Committee on Education and Labor. Too, it would be appreciated if you would please place me on your mailing list for copies of the testimony and action on this legislation.

Sincerely yours,

LLOYD M. DUNN, PH. D.

GEORGIA ASSOCIATION FOR CHILDREN  
WITH LEARNING DISABILITIES, INC.  
Atlanta, Ga., March 5, 1974

Hon. JOHN BRADEMAs,  
Chairman, Select Subcommittee on Education, B-345-A Rayburn House Office  
Building, Washington, D.C.

DEAR CONGRESSMAN BRADEMAs: It has come to our attention that the Select Subcommittee on Education will be hearing testimony regarding H.R. 70 this week. Since this bill concerns financial assistance to the States for improved educational services for handicapped children, our Association would like to submit the following testimony for the subcommittee's consideration

Yours truly,

BETTY LOCKETT,  
President, GACLD.

PERRY N. JOHNSON,  
President, Chattahoochee Council GACLD.

TESTIMONY OF GEORGIA ASSOCIATION FOR CHILDREN WITH LEARNING  
DISABILITIES, INC.

For many years, exceptional children were largely ignored and received few services of any kind; however, recently our society has begun to assume its responsibility and make provisions for meeting the needs of these children. While much has been accomplished in Georgia, only 7% of its total population of handicapped children is now being served. According to the best estimates available, our state has approximately 35,102 children with learning disabilities of whom only 11% are now receiving educational services. These statistics are probably comparable to those of other states.

Since learning disabled children are so nearly normal, they are easily overlooked by educators as well as those doing psychological testing. Needless to say, they also completely frustrate the regular classroom teacher who struggles to teach these intellectually bright children who fail to learn by conventional methods. Unfortunately, their problems are not recognized and they do not receive the services they need. From a purely economic standpoint, to say nothing of the moral and legal ones, it is "poor business" to fail to provide services for these children. Research indicates that many of our school dropouts, juvenile offenders and emotionally ill adults were failures in our nation's classrooms. By taking steps necessary to provide appropriate quality educational experiences now, the cost to society for rehabilitative services will be greatly reduced in the future. Surely we cannot afford to "rob Peter to pay Paul".

During recent years all branches of our government have confirmed that handicapped children have the right to appropriate educational programs. Although the GACLD focuses on Children with Learning Disabilities, we are aware that the kinds of programs and services that should be made available for Ld children are, for the most part, also needed by many other handicapped children.

While the general provisions under Title VI have served handicapped children well and should be extended, we feel consideration of some modification of this and other existing legislation would be worthwhile.

1. Due to the difficulty in distinguishing Ld. children from normal children within the school population, the education of teachers to recognize their difficulty has been a major obstacle in identifying and subsequently, providing services for them. While early identification of all exceptional children is important, it is vital for the child with a learning disability for it most likely means the difference between success and failure for the remainder of his academic life.



While some families seek private education for their I.d. children, the cost of such services is prohibitive to the vast majority of parents. With these factors in mind, we prefer that any grants for the education of exceptional children be awarded only those State Departments of Education who:

a. Require of each person applying for educational certification, a course dealing with the primary characteristics of children who are exceptional. (Georgia H.B. 1815 meeting this requirement now awaiting governor's signature).

b. Provide required in-service training for all professional public school personnel until such time as all such persons have completed the course mentioned in section a.

c. Provide continuing in-service programs for teachers already certified in the field of learning disabilities, for the purpose of updating their information and teaching skills.

Any State Department of Education willing to meet the requirement under section a. should be provided grants for developing the in-service programs mentioned in section b. and c.

While we consider the certification and in-service provisions to be extremely significant to the future of I.d. children, other areas also need consideration. Listed below are others which we feel must be included in the new legislation. Some are provided for under present ESEA legislation and should be continued and included in the new act while others have not been provided for previously.

Those involving state education agencies and institutions of higher learning are:

1. Grants to state education agencies and/or institutions of higher learning for fellowships, traineeships, etc. for teachers of I.d. children.

2. Funds to institutions of higher learning to develop programs at all levels for training teachers of learning disabled students. Of particular need are programs for students at the pre-school and secondary levels.

3. Appropriations to establish various kinds of programs for students with learning disabilities at all levels of education, including pre-school, secondary and residential programs which heretofore have been largely ignored.

4. Grants to establish diagnostic, evaluation and referral centers which could serve all children with special needs. These should be geographically located so that all children could be served with reasonable convenience and could be utilized to provide ancillary services for special education students and public school personnel.

The following grants should be made available to school systems located near selected teacher training institutions:

1. Grants for the development of new materials and/or techniques for educating I.d. children.

2. Funding for materials and/or equipment for I.d. children.

3. Research grants to more specifically define and identify the I.d. population.

4. Appropriation for programs designed to train and utilize teacher aides and other paraprofessional personnel who could extend the effectiveness of the I.d. teacher.

5. Grants for upgrading physical facilities such as classrooms to the level provided for normal students.

6. Funding to provide for Vocational-Rehabilitation training for I.d. children.

7. Appropriations to provide for the dissemination of information about learning disabilities to the general public.

8. Grants for the establishment of parent education programs designed to teach parents how to implement and extend child management techniques being utilized in the I.d. classroom.

In conclusion, we wish to emphasize that we can consider the provisions for certification of public school personnel, in-service training, diagnostic and referral centers, model learning disability centers and teacher training programs to be of the highest priority.

We are pleased to support H.R. 70 and respectfully request that the Select Subcommittee on Education consider carefully those points not already covered by this bill.

Let us emphasize that the Chattahoochee Council, GACLD, on the local level, and the Georgia Association for Children with Learning Disabilities on the state level are ready and willing to provide any assistance you may need and appreciate the opportunity to furnish you with information which may be instrumental in providing services for children with learning disabilities and other handicapped conditions.



STATEMENT OF IRVIN P. SCHLOSS, COORDINATOR OF GOVERNMENTAL RELATIONS,  
AMERICAN FOUNDATION FOR THE BLIND

Mr Chairman and members of the Subcommittee, on behalf of the American Foundation for the Blind, the national voluntary research and consultant organization in the field of services to blind children and adults, I wish to affirm our strong support of H.R. 70, the Education for Handicapped Children Act.

I am also specifically authorized to indicate the support of two additional national organizations for this bill. These organizations are the American Association of Workers for the Blind, the national professional membership organization of workers with and educators of blind persons, and the Blinded Veterans Association, the national membership organization of blinded former servicemen and women.

All three of these organizations believe that every handicapped child should have the right to educational services at least equal to those he would be entitled to if he were not handicapped. We believe that each handicapped child is entitled to individualized special education procedures which will enable him to benefit from as comprehensive an elementary and secondary education as he is capable of absorbing, so that he can move into advanced education or other vocational training which will equip him to earn his own way in life as a contributing member of society.

The recognition of educational needs of the handicapped and decisive action by the Congress to meet these needs have been gratifying to those of us in national voluntary organizations who have seen increasingly critical problems in the education of handicapped children which only Federal financial assistance can solve. The outstanding leadership given by the Bureau for the Education and Training of the Handicapped in the Office of Education has been a major force in the progress made thus far in the effort to assure educational opportunities to handicapped children throughout the country. We are gratified that the House of Representatives has strengthened the administrative structure of the Bureau in legislation extending the Education of the Handicapped Act. We hope that the integrity of the Bureau in administering all aspects of Federal programs relating to the education of handicapped children, including research, will be preserved and strengthened.

H.R. 70, with clarifying and strengthening refinements, is urgently needed legislation. The steadily increasing number of court decisions requiring states to provide appropriate free public education to handicapped children makes more emphatic the need for Federal financial assistance to meet the additional cost of compliance. An equitable formula through which the Federal Government assists the states to meet the excess cost of educating handicapped children over the cost of educating nonhandicapped children would be an effective way of meeting this objective. By requiring individualized education plans for each handicapped child, as well as due process procedures for parents dissatisfied with educational services provided their children, H.R. 70 would minimize arbitrary rejection of handicapped children by school systems. In addition the bill would foster deinstitutionalization of handicapped children, too many of whom were too hastily institutionalized on the basis of inadequate advice and inadequate diagnostic procedures.

Among the refinements to H.R. 70 which we would suggest are the following:

1. Provisions limiting services to children from age 3 to 21 should be changed to cover children from birth to age 21.

2. Special education and related services for which Federal funds will be available should be clearly defined and should include personnel, materials and equipment, due process procedures, development of individualized plans, evaluation, and reporting. These services should be made available to handicapped children in any setting.

3. Reimbursable costs for special education and related services should not include debt retirement, construction costs, or others capital outlays.

4. The formula for allocating funds to the states should be modified to clearly cover only excess costs.

5. The allocation formula should be modified to reward rather than to penalize states which are meeting the objective of H.R. 70 with state funds.

6. State plan provisions should foster interagency cooperation within a state so that handicapped children in all institutional settings can be adequately served.

7 The bill should foster the development of public education programs to supplant inadequate private programs established on an ad hoc basis to fill gaps in public programs.

As this Subcommittee is keenly aware, the recent court decisions in *Mills v. Board of Education of District of Columbia*, *Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania*, and *Lebanks v. Spears* have mandated equal educational opportunity for all children, with emphasis on the rights of the retarded. With similar litigation pending in many states where handicapped children may be "warehoused" without any educational benefits, tremendous pressure is mounting for those states to empty their institutions of the resident children. Commendable as the initial step may be, the intent will be completely frustrated if the deinstitutionalized handicapped child does not have access to professionally qualified teaching and other specialized staff.

Without exception, witnesses before your Subcommittee have expressed the fear that the thrust of H.R. 70 toward deinstitutionalization can result in incalculable harm to handicapped children moving out of custodial institutions to the public school system without adequate numbers of specially trained teachers and other personnel to serve them. Therefore, we recommend that state plan provisions in H.R. 70 be amended to assure that handicapped children who are transferred from institutions to public schools are guaranteed access to instruction and other specialized services geared to their needs. Unfortunately, the Administration's budget request for training of special education personnel for FY 1975 does not allow the growth which will be needed in public education programs to provide adequately for the additional numbers of handicapped children who will be enrolled in the years ahead as the provisions of H.R. 70 are implemented. We hope that the Committee on Appropriations will increase the appropriation items for special education manpower and recruitment in order to meet readily foreseeable needs.

Another recommendation we would like to suggest involves the critical area of parent counseling, which will be particularly crucial for the families of children who will receive special education services in a variety of institutional settings as well as for the parents of deinstitutionalized children. We strongly urge that state plan provisions contained in H.R. 70 be amended to assure parent counseling.

The addition of the word "timely" before "notice" in Section 7(a)(5) dealing with safeguarding the rights of due process for both the child and his parents could enhance these rights. The Subcommittee will recall that one of the four major points of contention in the Supreme Court ruling on the *Gault* case involved juvenile rights was the fact that official notice to the juvenile's parents had not been "timely" and was therefore considered invalid.

The range of due process to all members of the affected family is well reflected in Section 7 of the bill. However, in concurring with the opinions of other witnesses on the need to maintain confidentiality of the student's records, we strongly urge that Section 7(a)(2) be strengthened by the addition of language to mandate confidentiality.

To further protect the civil rights of handicapped children, we would urge that H.R. 70 be used as a vehicle to amend Section 504 of Public Law 93-112, the Rehabilitation Act of 1973, prohibiting discrimination against handicapped persons in Federally assisted programs, in order to add enforcement language similar to that used in civil rights legislation concerning racial discrimination.

With regard to our recommendation for authorizing special education procedures for handicapped children to begin as soon after birth as practical, the earliest possible identification of handicapping conditions offers the greatest hope for enhancing education potential through prompt provision of special education procedures. In a 1972 study, "Blindness in Infants and Young Children," the National Society for the Prevention of Blindness reported that the onset of blindness occurred under one year of age in 97 percent of the 3,000 cases studied. Multiple handicaps resulting from the mother's exposure to rubella are, of course, present at birth.

H.R. 70 is urgently needed if the large numbers of handicapped children not currently being served are to receive appropriate special education services. In New York, we know that over 200,000 of the state's 459,000 handicapped school-age children fail to receive any special education services. In Pennsylvania, only 41 percent of the handicapped children are being served, in spite of the PARC decision. In Tennessee, half of the estimated 115,000 handicapped children receive no special education. Over 80 percent of Indiana's children in institutions are not educated but merely stored, despite the 1969 statute

requiring special education for the state's 133,000 handicapped children. It is estimated that only 40 percent of the handicapped children in our country are receiving special educational services. "Today, education is perhaps the most important function of State and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the State has undertaken to provide it, is a right which must be made available to all on equal terms."

These closing sentences from the Supreme Court's 1954 ruling in *Brown v. Board of Education* are as significant 20 years later as they were when the decision was handed down. H.R. 70 can be the vehicle for making essential educational opportunities available to the nation's handicapped children.

#### STATEMENT IN BEHAIF OF UNITED CEREBRAL PALSY ASSOCIATIONS, INC., NEW YORK, N.Y.

United Cerebral Palsy Associations, Inc. enthusiastically endorses H.R. 70, the Education of All Handicapped Children Act. Present service delivery systems, including the education system, have ignored the severely handicapped and relegated them to some pattern of institutionalized existence out of the mainstream of society. UCPA favors an increased federal role in financing the education of the severely handicapped because States either do not have the resources or the determination to meet the challenge before them.

#### EDUCATIONAL NEEDS OF THE SEVERELY AND MULTIPLE HANDICAPPED

Affiliates of United Cerebral Palsy Associations, Inc. have a twenty-five year experience in providing educational opportunities to the severely handicapped. Our daily programming responsibilities reinforce the reality that States have generally rejected the severely handicapped children. We are in the programming business because States have turned their backs on the child with severe and multiple difficulties.

Our programming experience has demonstrated that education succeeds with the severely handicapped. Several guiding educational principles underlie our efforts:

(1) The education of multiple handicapped children has to be based on the combined efforts of many people: Teachers, physicians, psychologists, therapists, nurses, social workers, aides, and most importantly, parents.

(2) The only valid method of measuring the progress of handicapped children is to consider their strengths and weaknesses and the developmental patterns common to all children.

(3) Because physically handicapped children so often experience difficulties in making direct contact with their environment, the environment must be adapted to their special needs.

(4) Integration with non-handicapped children, wherever possible, is essential to the normalization process.

(5) To alleviate and compensate for the effects of disability, an individual support system must be available to provide services as needs arise. An individual written program plan of intervention and action, modified at frequent intervals, is a necessity. This concept is included in the *Standards for Community Agencies* promulgated by the Accreditation Council for Facilities for the Mentally Retarded (ACFMR) of the Joint Commission on Accreditation of Hospitals. As a member of ACFMR, UCPA warmly endorses the standards.

States have defaulted in their responsibility because of the overwhelming cost involved in supporting educational services for the severely handicapped. As Mrs. Ralph Lee of Nashville, Indiana, testified before this Committee, the parents have to bear the costs of privately financing the education of their severely handicapped children. These costs are beyond the resources of a family of average and even above average income. The financial hardships suffered by the

Lee family are being replicated in thousands of homes across our land. The severely handicapped and their families need help.

With over one million handicapped children totally excluded from public schools and with 60% of the nation's seven million handicapped children underserved, UCPA affiliates have responded to the void in services. We will continue to access services for the severely handicapped through the public schools where available and to provide direct services where no other alternative exists. We will encourage continued public-private cooperation and contract with State and local government for the provision of services. But UCPA insists that the public sector face up to its responsibility of educating *all* handicapped children.

#### TRANSDISCIPLINARY APPROACH: ALTERNATIVE PROGRAMMING FOR THE EDUCATION OF THE SEVERELY AND MULTIPLY HANDICAPPED

As a consequence of involvement in the UCPA Nationally Organized Collaborative Project to Provide Comprehensive Services to Handicapped Infants and their Families, interdisciplinary teams have been mobilized to provide primary services to the severely and multiply handicapped child. The transdisciplinary approach can be utilized by school systems to overcome the complexity of serving the severely handicapped and to reduce the costs of services.

The transdisciplinary approach is the strategy of pooling professional skills across discipline lines and role-releasing first to a team facilitator who provides the services and teaches the needed skills to the parent. The teacher, teacher's aide, or para-professional can serve as the primary programmer or team facilitator. Although roles are released, accountability under licensure is not. The "Mini-Teams" usually include a physical therapist, an occupational therapist, a speech therapist, a nurse, and usually a teacher.

"Mini-Teams" using the transdisciplinary approach, have succeeded in several State institutions in teaching bedfast, profoundly retarded, multiply handicapped individuals how to walk, communicate verbally, and learn self-care skills. Several States are presently using "Mini-Teams." An excellent example of the use of these "Mini-Teams" is at the Willowbrook State School in New York.

UCPA has training costs for the "Mini-Team" but we do not have operational costs. Our experience has largely been in the Infant Program where we have relied heavily upon the parent as primary programmer and have had support systems already in place. To train a team of 4 to 6 professionals at the post graduate level in the transdisciplinary approach, \$3000 to \$5000 is required. Though we do not have operational costs for the school age population, we sincerely believe the transdisciplinary approach will cost out less than the present system of separated instructional and ancillary service approach. UCPA believes the education community should view the "Mini-Team" as a concrete alternative to serving the severely handicapped.

#### UCPA REMARKS ON SPECIFIC PROVISIONS OF H.R. 70

##### (1) *Need for a Definition of Special Education*

In approaching the distribution of State allotments proposed under H.R. 70, UCPA believes the bill must provide a uniform definition of the services to be provided through H.R. 70. We recommend that Section 3 be amended to include the following definition:

"Special education and related services means free classroom, itinerant, home, hospital, institutional, or other instruction to meet the unique educational needs of handicapped children, and transportation, developmental, corrective, and supportive services required to assist handicapped children in taking advantage of or responding to educational programs."

For far too long, professionals have separated bits and pieces of individuals in programming services. We must learn to program for the entire individual not merely his legs or arms, or instruction in isolation. The proposed definition, we believe, provides uniformity to the bill and looks at severely and multiply handicapped persons as whole individuals. This concept of the whole person underlies the "Mini-Team" concept of the transdisciplinary approach.

##### (2) *Priority to the Severely Handicapped*

Because the severely handicapped have been denied access to existing programs and have suffered undue hardships and limitations because of neglect and discrimination, UCPA endorses the recommendation of the National Association of Coordinators of State Programs for the Mentally Retarded that Section 7

be amended with an additional State Plan requirement. This requirement would establish methods to assure children with most severe handicaps, who are presently unserved or underserved, to receive first priority in services under H.R. 70.

(3) UCPA endorses the *deinstitutionalization* study and emphasis as proposed in Sections 7(a) (3) and (4) and 8.

(4) UCPA endorses the *due process* procedures proposed by Section 7(a) (5).

(5) UCPA applauds the emphasis on *mainstreaming* as proposed in Section 6(a) (6) of S. 6, and requests its inclusion in H.R. 70.

(6) UCPA also asks that H.R. 70 to provide for an *individual written plan* as provided in Section 6(a) (4) of S. 6.

(7) UCPA is encouraged by the *consumer and parent participation* on Advisory Councils as proposed in Section 7(a) (11).

(8) UCPA endorses the *coordination* provisions as proposed by Section 7(a) (15). We believe in the necessity of coordinating total comprehensive services needed by handicapped citizens over their entire life span. We believe that every State education administrator must be involved with their State Developmental Disability Advisory Councils as well as other State agencies in guaranteeing such comprehensive programming.

#### CONCLUSION

Education is now a legal right. Education also makes sense because it succeeds in reducing dependency and helping individuals reach their potential. H.R. 70 is long overdue but badly needed legislation. UCPA congratulates the sponsors of H.R. 70.

MIAMI, FLA., March 6, 1974.

WILLIAM LEHMAN,  
House of Representatives,  
Washington, D.C.

DEAR MR. LEHMAN: I am sorry but I never received your letter of September 18 asking me to submit testimony to the Subcommittee on our problem with our son. I only received your letter of March 2, 1974 until March 6, 1974. I hope this letter gets to you in time to help.

I have a son, who is nineteen years old and who has Dyslexia (learning disability). He sees and reads backwards. This of course affects his writing and spelling. His IQ is above average. When he was first starting school in the public school system of Dade County, they did not know what was wrong with him. He was in a special education class in the public schools until he was in the sixth grade. They did not have any special way of teaching him, nor did they know what was wrong with him even then.

To give him a better chance at life, we had him transferred to a private school Gables Academy that is geared to teaching students like my son. This was a great expense to us \$3,000.00 tuition a year for the past 7 years. However, even though we have done without in order that he get this help, other families may not be able to do this. I understand that this condition is now recognized however, there are not many of the public schools that are equipped to teach these students even now.

My son has graduated from Gables Academy last June. He is now able to read between a 5th and 7th grade level. However, his writing and spelling is still very bad. He is now attending Miami Dade Community College, North Campus under a special program for Special students. It is only a one year course, and really isn't the answer. Gables Academy has done much for my son, but it also isn't the answer. Here my son has graduate (and thankfully without any hangups about his condition) and has no direction to go. There is so much he would like to do but is unable because of his handicap.

The School system should by this time have Special Classes for Students with Learning disabilities and by the time the student reaches ninth grade they should be tested to see what type of work or position they are capable of handling with their qualifications. They should then start training for vocations, not wait until they graduate.

There should also be some sort of Information center connected with the School board that a parent can get some help and guidance and direction in solving these problems. All the information that I have has been picked up here, there and everywhere by asking questions, but not any information from the School Board. There was no one really to turn to - most of my information was obtained from articles in magazines and newspapers.

My son is going to be tested by the Vocational Rehabilitation Services sometimes in April. Hopefully we will then find out what he is capable of doing for a living and then be trained.

We are lucky in a way that my son has no hangups about this condition. If this condition is not recognized and dealt with in the right manner, the student could have a severe emotional condition as well. My son was told that he had this learning problem and has learned to deal with it. I just hope that we can find something he can do, so that he can be content and not ruin all that has been done so far.

I certainly hope that new legislature and financial assistance can be made for the State in order to improve educational services for the handicapped children. These services will not be available to my son, but surely are needed by smaller and younger children of this state.

Sincerely,

Mrs. MARCUS FREUNDLICH.

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